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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 636

THE CITY OF NEWARK, a municipal corporation of New Jersey,

Petitioner,

vs.

THE PORT OF NEW YORK AUTHORITY, a body corporate and politic, created by Compact between the States of New Jersey and New York,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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THE CITY OF NEWARK,
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THE PORT OF NEW YORK AUTHORITY, a body coporate and politic, created by Compact between the States of New Jersey and New York,

Respondent.

Petition for Writ of Certiorari to the Supreme Court of New Jersey

Petitioner respectfully prays that a writ of *certiorari* issue to review the judgment of the Supreme Court of New Jersey entered on June 25, 1969.

Opinions Below

The action was initiated by the Port Authority in the Superior Court of New Jersey, Law Division, for a de-

claratory judgment that certain lands and buildings leased by Newark to the Port Authority in the Port Newark area are exempt from local taxation. Newark did not ally itself with the position of the Port Authority, but joined as a party plaintiff for the purpose of achieving a determinative resolution of the issue by judicial declaration. The Law Division held that with respect to properties leased by the Port Authority from Newark pursuant to statutory authority for the operation of a marine terminal, those properties used for transit functions, temporary storage and supporting services are exempt from taxation while properties used for general warehousing, sales and deliveries and for processing and manufacturing are taxable. The opinion so holding, a copy of which is attached hereto as Appendix B, is reported at 103 N. J. Super. 41.

On appeal to the Appellate Division, and certification by the Supreme Court, the latter court held that uses of properties at Port Newark operated by the Port Authority under its lease with Newark, for transit functions, warehousing, processing and distribution activities and service buildings were all statutorily authorized purposes and were tax exempt as publicly-owned property devoted to "public purposes." The opinion so holding, a copy of which is attached hereto as Appendix A, is reported at 54 N. J. 171.

Jurisdiction

The jurisdiction of this Court is conferred by 28 U. S. C. 1257(3), to test the immunity from taxation specially set up or claimed by the Port Authority under compacts between the States of New Jersey and New York.

The judgment sought to be reviewed was entered on June 25, 1969.

Question Presented

Are the uses of properties at Port Newark operated by the Port Authority under its lease with Newark, for general warehousing, sales and deliveries of merchandise and for processing and manufacturing exempt from taxation under interstate compacts, represented by N.J.S.A. 32:1-1 *et seq.*, 32:1-25 *et seq.*, 32:1-144 *et seq.* and 32:1-35.28 *et seq.*?

Statutes Involved

Pertinent portions of each of the just-noted statutes have been copied and attached hereto as Appendices D, E, F and G, respectively. Another statute here involved is N.J.S.A. 54:4-3.3. See Appendix H hereto.

Statement of the Case

Plans for the development of a marine terminal on Newark Bay date back to the beginning of this century, with study commission reports and legislation leading to public ownership and operation of marine terminals.

Pursuant to the authority of the foregoing legislation, the City of Newark developed the marine terminal complex in the Port Newark area, covering approximately 700 acres, including the leasing of docks, lands and buildings to private concerns.

In the interim, New Jersey and New York entered into an interstate compact pursuant to Congressional authority, establishing the Port of New York District and creating the Port of New York Authority as the bi-state agency for the purpose of developing the port district. N.J.S.A. 32:1-2 *et seq.*

In 1945, the City of Newark requested the port authority to undertake a study of all matters relating to Port

Newark and Newark Airport for the purpose of considering the possibility of the port authority undertaking the management and administration. As a result of such a study legislation was adopted in 1947 authorizing the cooperation between the port authority and municipalities in the development of marine terminals. N.J.S.A. 32:1-35.28 *et seq.* Parallel legislation was adopted in the State of New York. Under this legislation, municipalities were empowered "to consent to the use by the port authority of any marine terminal owned by such municipality * * * [and] to grant, convey, lease or otherwise transfer to the port authority any such marine terminal or real or personal property upon such terms as may be determined by the port authority and such municipality." N.J.S.A. 32:1-35.31. In addition, every municipality was also authorized "to vest in the Port Authority the control, operation, maintenance * * * of any marine terminal now owned by such municipality." *Id.*

Instead of conveying the marine terminal properties to the port authority or retaining the port authority as a managing agent of the marine terminal within the ambit of the foregoing legislative authorization, the city entered into a lease agreement with the port authority on October 22, 1947 demising certain premises for a term of 50 years for marine and air terminal purposes. Under this lease, which carried a basic rental of $128,000 per year, the port authority assumed all the existing leases theretofore made by the city, and was authorized to sublet parts of the demised premises for the stated marine and air terminal purposes. Since entering into possession, the port authority has sublet most of the properties involved in the leasehold to private concerns, and that is the factual pattern which existed on October 1, 1966, the key assessment date for the tax year of 1967.

In 1960, the city concluded that certain of the demised premises were not being used for air and marine terminal purposes and should be subject to ordinary taxation. It therefore applied to the Essex County Board of Taxation to list these properties on the tax rolls as omitted assessments. The same approach applied to the tax years of 1961, 1962, 1963, 1964 and 1965. The Essex County Board determined that the property should be assessed with the port authority listed as "Owner".

This determination inspired appeals to the appellate division and suits in the law and chancery divisions of the Superior Court. The Supreme Court finally took jurisdiction of all aspects of the complex litigation and remanded the matter to the law division to hear *de novo* all the issues involved in the entire controversy. *Port of New York Authority* v. *Essex County Board of Taxation,* 46 N. J. 51 (1965).

Subsequent to the remand and pending the trial in the law division, the city and the port authority effected a settlement of their differences involving the tax years from 1960 to 1965 inclusive by entering into the "Ninth Supplemental Agreement with Respect to the Newark Marine and Air Terminals," dated December 14, 1966. As part of the settlement agreement, the annual rental was increased from $128,000 to $1,000,000, with a provision for additional rental using a formula based upon a computation of the net revenue of the port authority.

Among other provisions relating to advance payments and retroactive rent for 1966, the agreement provided:

> "In the event the City or the Port Authority, or both, under any law that may hereafter be enacted or applied, shall be or become subject to and liable for payment to the county in which the demised premises are located of any taxes, assessments or

governmental levies or imposts upon or against the demised premises or upon any part or parts thereof then, as between the City and the Port Authority, the Port Authority shall pay the same and such payment by the Port Authority shall be included in the operation and maintenance expense."

It was also stipulated that all litigation pending between the parties would be dismissed with prejudice and that the city would designate on its tax records that all the properties involved in the leasehold are tax exempt.

The agreement went into effect, the prior litigation was dismissed, and the City marked the properties exempt on its tax roles. On a review of the assessments of the city for the taxable year 1967, the Essex County Board of Taxation set aside the exemption and directed that the city restore the demised properties to its tax rolls. The city complied with this directive and thereafter the present suit was brought for declaratory judgment relating to the taxability of the affected properties for the year of 1967.

The major areas of dispute arise with properties which are utilized by private companies under sublease from the Port Authority for the conduct of ordinary business activities involving the sale and delivery of goods to customers, warehousing of goods, and the processing and manufacturing of products.

Stages in the Proceedings and Manner in Which the Federal Question Sought to be Reviewed was Raised.

Paragraph 8 of the Port Authority's complaint in the Law Division reads (Tr. 3a):

> "* * * each of the properties listed on Schedule 'A' attached to the Resolution of defendant, Board [Tr. 8a, 9a], is publicly owned and devoted to Marine Terminal purposes, pursuant to and in accordance with R.S. 32:1-35.28 et seq. [see Appendix G] and is, under the law of the State of New Jersey, exempt from taxation."

See, also, paragraph 7(6) of the Pretrial Order (Tr. 15a), which reads:

> "(6) Construction of the statutory term marine terminal purposes under N.J.S.A. 32:1-35.28."

Furthermore, the opinion of the Law Division (see Appendix B), at page 49 of 103 N. J. Super., says:

> "The port authority however points to the provisions of N.J.S.A. 32:1-144 as a basis for tax exemption:"

That statute will be found in Appendix F, attached hereto.

And, at page 54 of 103 N. J. Super.:

> "* * * The port authority contends that the properties in question are being used for a public purpose since they are being used as a marine terminal pursuant to N.J.S.A. 32:1-35.28 et seq. The other parties concede that a marine terminal is a public use and that the ultimate issue presented by this litigation is whether the properties are used for marine terminal purposes."

As we have seen, the Law Division held that properties used for general warehousing, sales and deliveries of merchandise and for processing and manufacturing are taxable.

In the opinion of the Supreme Court of New Jersey, 54 N. J. 171, see Appendix A hereto, the following appears, at page 520 of 254 A.2d (as unofficially reported):

> "Although the history and contemporaneous construction of the marine terminal act (L. 1947, c. 44; R.S. 32:1-35.28 et seq., N.J.S.A.) strongly support the conclusion that the Legislature contemplated tax exemption of the Port Newark properties devoted to marine terminal purposes, reference must be made to R.S. 54:4-3.3, N.J.S.A. [see Appendix H hereto], for express authority for the exemption. That long standing statute provides that publicly-owned properties 'used for public purposes' shall be tax exempt."

And, same page:

> "* * * In their briefs before us, the Authority, the County Board and the City of Newark have all expressed their full agreement with this determination although they have pursued their differences as to what properties were being used for marine terminal purposes."

The same opinion further stated, at page 525 of 254 A. 2d:

> "* * * All in all we find that the properties at the terminal were without exception used for statutorily authorized purposes, were tax exempt as publicly-owned property devoted to public purposes, and that the Law Division's judgment must be modified accordingly."

Reasons for Granting the Writ

The writ should be granted because the court below has decided an important question of federal law which has not been, but should be, settled by this court.

Supporting Precedents

In *Town of Harrison* v. *County of Westchester*, 13 N. Y. 2d 258, 196 N. E. 2d 240 (1963), the court held that hangars located on county-owned airport property and land on which they stood were not exempt from town taxation as property held for public use where the hangars were occupied by private corporations, either as lessees or sublessees under long-term leases insuring to them complete dominion over the premises. The court says, at pages 242 and 243 of 196 N. E. 2d:

> "Although such exempt property would normally include not only the land which is used for runways, ticket offices, waiting rooms and the like but also the land upon which are erected hangars to house and maintain the aircraft serving the public * * *, there can be no doubt that the courts below were correct in denying such tax exempt status to Hangars 'D' and 'E' for the reason that they are not being employed for a public use. As the (243) trial court in this case aptly noted, both hangars are occupied by private corporations, either as lessees or sublessees, 'under long-term leases which insure to them complete dominion over the premises demised to them.' The hangars were not leased, nor are they utilized, for the purpose of providing storage or maintenance area for aircraft serving the general public or for any other purpose redounding to the benefit or advantage of the general community.

> On the contrary, they are being devoted to servicing the private aircraft of their corporate occupants and, indeed, the occupancy of Hangar 'E' is expressly limited by the operative leases to such a purpose. These two factors—the exclusive, long-term control of the premises by private corporations and the use of the premises by them solely for the storage and maintenance of aircraft serving only their own personnel and guests—warrant the conclusion that the hangars, and the land upon which they are located, are not 'held for a public use.'"

In re Township of Moon, 387 Pa. 144, 127 A. 2d 361 (1956), cited by the Court of Appeals in the foregoing case, the court says, at page 364 of 127 A. 2d:

> "The legal principles applicable to the situation are entirely clear. Article IX, §1, of the Constitution, P.S., permits the General Assembly to exempt from taxation public property *used for public purposes*. Undoubtedly the portions of the Airport employed in its actual operation—the landing fields, runways, ramps, hangars, ticket offices, waiting room for passengers, management offices, control tower, repair shops and the like—represent a public use which properly exempts them from taxation; this is conceded by all the parties. There is likewise no question but that property the use of which is *reasonably necessary* for the efficient operation of the Airport, even though not indispensable or essential thereto, is also entitled to exemption. Nor can such property be denied exemption merely because it is rented out by the Airport and thereby yields a return which serves to reduce expenses, because, where the primary and principal

> use to which property is put is public, the mere fact that an income is incidentally derived from it does not affect its character as property devoted to a public use. * * * On the other hand, however, there is equally no doubt but that property, even though owned by a body ordinarily tax exempt, is taxable if used by it for commercial purposes, or if rented to a lessee for a purely business enterprise and not a public use; this is true even though the rentals or other proceeds from the property are devoted to the tax exempt activities of the lessee."

In *Gloucester Ice & Cold Storage Co.* v. *Assessors of Gloucester,* 337 Mass. 23, 147 N. E. 2d 820, 822-823 (1958), the court says:

> "* * * The property subleased to Cold Storage is land of the Commonwealth used for other than public purposes. The character of the use is not 'determined by the activities of the holder of the principal lease,' namely Association * * *. As was (823) said in Cabot v. Assessors of Boston, 335 Mass. 53, 65, 138 N. E. 2d 2d 618, '(a)lthough the maintenance of the pier as a facility was a proper public purpose to assist the important fishing industry, the use of the pier by the sublessees in their own businesses was held * * * not to be for a public purpose.' It is for the Legislature to decide to what extent it will assist the execution of a public purpose. Here the Legislature has made no express provision for tax exemption of the pier in the hands of tenants operating for private profit, comparable to the specific tax exemption considered in the Cabot case (355 Mass. at pages 63-65, 138 N. E. 2d at pages 625-626), but has contented itself with assisting the fishing industry by the con-

> struction of basic facilities, leaving them taxable under sec. 3A to private business occupants, even though such occupants directly and indirectly contribute to the accomplishment of the public purposes."

And in *City of Cleveland* v. *Park,* 2 Ohio St. 2d 173, 207 N. E. 2d 556 (1965), where portions of a municipally owned airport were leased to a private corporation for profit, engaged in the business of providing fixed base operations at airports, the court held that the property lost its identity as public property used exclusively for a public purpose and was not entitled to exemption from taxation.

CONCLUSION

It is respectfully urged that this petition for certiorari should be granted.

Respectfully submitted,

PHILIP E. GORDON,
Corporation Counsel of and
Attorney for Petitioner.

SAM WEISS,
Assistant Corporation Counsel,
Of Counsel.

APPENDIX A

Opinion of the Supreme Court of New Jersey

64 N. J. 171

THE CITY OF NEWARK,

Plaintiff-Respondent,

and

THE PORT OF NEW YORK AUTHORITY,

Plaintiff-Appellant and Cross-Respondent,

v.

THE ESSEX COUNTY BOARD OF TAXATION,

Defendant-Respondent and Cross-Appellant.

and

TOWN OF BELLEVILLE, *et al.*,

Intervening Defendants-Respondents.

SUPREME COURT OF NEW JERSEY

Argued May 5, 6, 1969.

Decided June 25, 1969.

Appendix A

Action by Port of New York Authority for declaratory judgment that certain lands and buildings leased to it by city of Newark in Port Newark area are exempt from local taxation. From judgment entered by the Superior Court, Law Division, 103 N. J. Super. 41, 246 A. 2d 509, the Port of New York Authority appealed to the Appellate Division, and the Essex County Board of Taxation cross-appealed. The Supreme Court certified the matter before it was argued in the Appellate Division. The Supreme Court, Jacobs, J., held that uses of properties at Port Newark operated by Port of New York Authority under its lease with City of Newark, for transit functions, warehousing, processing and distribution activities and service buildings were all statutorily authorized purposes and were tax exempt as public-owned property devoted to "public purposes".

Judgment modified.

• • • •

Norman N. Schiff, Newark, for City of Newark (Philip E. Gordon, Corp. Counsel, attorney).

Charles H. Landesman, Deputy Atty. Gen., for The Essex County Bd. of Taxation (Arthur J. Sills, Atty. Gen., attorney, Elias Abelson, Trenton, of counsel).

Saul A. Wolfe, Newark, for intervening defendants-respondents (Skoloff & Wolfe, Newark, attorneys).

The opinion of the court was delivered by

JACOBS, J.

The Law Division held that a goodly portion of the real property at the Port Newark terminal owned by the

City of Newark and leased to The Port of New York Authority was subject to local property taxation. City of Newark, et al. v. Essex Cty. Bd. of Taxation, 103 N. J. Super. 41, 246 A. 2d 509 (1968). The Port of New York Authority appealed to the Appellate Division from that part of the Law Division's judgment which designated much of its leased property as not exempt and the Essex County Board of Taxation cross-appealed from that part which designated some of the leased property as exempt. We certified the matter before it was argued in the Appellate Division. R.R. 1:10-1.

The lower court recognized, as do we, that the pertinent history should be examined and evaluated for the light it may properly shed on the legislative contemplation. 103 N. J. Super. at 45-48, 246 A. 2d 509; Lloyd v. Bermeulen, 22 N. J. 200, 206, 125 A. 2d 383 (1956); Hudson County News Co. v. Sills, 41 N. J. 200, 226, 195 A. 2d 626 (1963), *appeal dismissed,* 378 U. S. 583, 84 S. Ct. 1914, 12 L. Ed. 2d 1036 (1964). As early as 1911 the Legislature adopted a resolution which referred to the fact that our communities were exercising local control over their waterfront facilities without any coordination with other communities, and which requested the Governor to appoint commissioners to act with others in formulating proposals for the development and management of the Port of New York: Jt. Res. No. 3, Laws of 1911, p. 840. The Governor did appoint such commissioners and in February, 1914 they submitted a preliminary report which recommended the creation of a permanent State agency with well defined powers over "the waterfront and waterways in the State". New Jersey Harbor Commission, Fourth Preliminary Report 8 (1914). In the course of their report, the commissioners referred to the trend towards

public control of waterfront facilities in the United States, as well as in foreign countries, and noted that considerable legislation had been "passed by States and cities, creating public bodies to control and develop the waterfront, not only with respect to docks and piers, but also to beltline railroads, storage and warehousing accommodations and the other things which go to make up a terminal," Fourth Preliminary Report, supra at 37-38. In April, 1914 an act was passed formally creating the New Jersey Harbor Commission and defining its power and duties. *See* L. 1914, c. 123; New Jersey Harbor Commission, Annual Report (1915).

In 1916 the Legislature adopted a referendum act which authorized cities fronting on tidewater "to establish municipal docks, warehouses and shipping and industrial facilities, and to operate or lease the same in whole or in part". L. 1916, c. 162 (R.S. 40:179-58 et seq., N.J.S.A.). During the following year the Governor strongly supported the development of marine terminals through public ownership and the Legislature again adopted a referendum act authorizing any city fronting upon navigable waters "to establish docks, warehouses, ferries, terminals and shipping and industrial facilities" and to operate such facilities or lease them for terms of years. L. 1917, c. 127 (R.S. 40:179-46 et.seq., N.J.S.A.). This legislation expressly provided that every terminal erected pursuant to its provisions "and every interest or estate therein, shall, during the term of any lease thereof made as herein provided, be exempt from all taxes and assessments within this State". L. 1917, c. 127, § 10 (R.S. 40:179-55, N.J. S.A.).

Appendix A

In 1920 the Legislature adopted the so-called industrial terminal act which substantially reenacted the 1917 act including its provision for tax exemption but omitting its referendum requirement. L. 1920, c. 176 (R.S. 40:179-34 et seq., N.J.S.A.). *See* R.S. 40:179-42, N.J.S.A. Under the authority of the foregoing legislation, Newark developed a marine terminal complex in the Port Newark area. *See* Shea v. Ellenstein, 118 N. J. L. 438, 193 A. 551 (Sup. Ct. 1937); American Agricultural Chemical Co. v. Murphy, 136 N. J. L. 193, 54 A. 2d 719 (E. & A. 1947). The terminal covered approximately 700 acres of land and included wharves, warehouses and other buildings, along with open spaces, which were leased to private tenants engaged in receiving, storing, processing and distributing products of varying nature. Admittedly all of the leased real property thus used at the terminal was exempt from local taxation under R.S. 40:179-42 and R.S. 40:179-55, N.J.S.A.

In the meantime there were significant developments concerning the creation and activities of the Port of New York Authority. In 1917 the Legislature provided (L. 1917, c. 130) that the Governor shall appoint commissioners to meet with New York commissioners and recommend the policy to be pursued in developing the Port of New York. Three years later the commissioners submitted the results of their extensive studies. *See* New York, New Jersey Port and Harbor Development Commission, Joint Report with Comprehensive Plan and Recommendations (1920). They pointed to the serious economic penalties which result from inadequate and incomplete terminal facilities and recommended the adoption of a compact between New Jersey and New York establishing a port district and creating a permanent interstate agency for de-

velopment of the port. In 1921 the Legislatures of New Jersey and New York authorized the execution of the port compact (consented to by Congress 42 Stat. 174 (1921) establishing the port of New York district and creating the Port of New York Authority as their joint agency. L. 1921, c. 151; Laws of N. Y. 1921, c. 154. *See* R.S. 32:1-1 et seq. The 1921 compact vested the agency with full power to construct, lease and operate any terminal facility within the port of New York district and defined "terminal facility" to include wharves, piers, docks, warehouses, cold storage, etc., "and every kind of terminal or storage facility now in use or hereafter designed for use for the handling, storage, loading or unloading of freight at steamship, railroad or freight terminals". R.S. 32:1-23, N.J.S.A.

In 1922 New Jersey and New York adopted a comprehensive plan for the development of the port district. L. 1922, c. 9; Laws of N. Y. 1922, c. 43. *See* R.S. 32:1-25 et seq., N.J.S.A. Bard, The Port of New York Authority 35-62 (1942). The plan provided, *inter alia,* that terminal operations within the port district should be unified insofar as economically practicable; that there should be consolidation of shipments so as to eliminate duplication of effort and inefficient loading of equipment; and that there should be the most direct routing of all commodities so as to avoid centers of congestion, conflicting currents and long truck hauls. R.S. 32:1-26, N.J.S.A. Though the 1921 and 1922 legislation contained no express provision for tax exemption there is little reason to doubt that such was the legislative purpose. In any event, in 1931 the New Jersey Legislature provided (L. 1931, c. 69; R.S. 32:1-141 et seq., N.J.S.A.), as did the New York Legislature by complementary enactment (Laws of N. Y.

1931, c. 553; Unconsol. Laws §§ 6971-6973 (McKinney 1961)), that in order to relieve municipalities of undue loss of taxation because of Port of New York Authority acquisitions, the Authority shall have power "in connection with any marine or inland terminal property owned by it" to make voluntary payments to municipalities in reasonable amounts not exceeding the sums last paid as taxes on the property prior to its acquisition by the Authority. In Port of N. Y. Authority v. City of Newark, 20 N. J. 386, 120 A. 2d 18 (1956), this Court, citing Bush Terminal Co. v. City of New York, 282 N. Y. 306, 26 N. E. 2d 269 (1940), pointed out that the Legislatures of both New Jersey and New York must have considered the Authority's marine and inland terminal property to be tax exempt; otherwise there would have been no need for relief to the local municipalities by way of L. 1931, c. 69, described as the "in-lieu-of" tax statute. 20 N. J. at 393, 120 A. 2d 18.

Throughout the years, Newark's efforts to develop its seaport had proven very costly to its taxpayers and at the close of the second world war, during which period the seaport had been used by the Government for military purposes, it was in critical need of rehabilitation and reconstruction. At the request of Newark's Central Planning Board, a study of Newark's marine and air terminals was made by the Harland Bartholomew firm which submitted its preliminary report in 1945. In that report it was pointed out that "to date, Port Newark has cost the taxpayers approximately $9,600,000" and continued city operation would not avoid "long periods of substantial annual deficits". The possibility of having the seaport, along with Newark's airport, operated by private parties, in which event they would be subject "to full taxa-

tion", was mentioned but the report recommended instead that they be placed in the hands of an independent public agency such as the Port of New York Authority which appeared "to possess the best possibilities for Newark." In 1945 Newark requested the Port of New York Authority to undertake "a thorough study of all matters with relation to Port Newark and Newark Airport, to the end that the said Port of New York Authority may make to the City of Newark a proposal concerning the possibility of its undertaking the management and administration of the said Port Newark and Newark Airport."

Pursuant to Newark's request, the Port of New York Authority conducted a survey and presented a report. *See* Development of Newark Seaport and Airport (1946). It proposed extensive rehabilitation of the marine terminal area including the redredging of the channel, the rehabilitation of the existing wharves, buildings, pavements and trackage and the providing of new transit sheds, bulkheads, wharves, warehouses, industrial space and "other appropriate and needed facilities". At one point in the report the tenants who would use the facilities were described as "handlers, storers" and "processors" of commodities. At another point, the report indicated that "shipping lines, lumber companies and distributors of a wide variety of commodities" were awaiting the availability of space at the marine terminal, and in detailing the benefits to be received from the port development the report referred to the fact that "personal property taxes" from tenants in the terminal area would increase. *See* R.S. 54:4-9 et seq., N.J.S.A. There was no suggestion whatever of real property taxes except in the proposed agreement submitted by the Authority under

which the city would transfer to the Authority "the existing marine and air terminal facilities" for five million dollars, the Authority to provide up to seventy-one million dollars for improvements and to pay the city one hundred thousand dollars annually "in lieu of taxes".

The Authority's proposal was supported by the local Chamber of Commerce which anticipated benefits in the form of expanded business, increased employment and "personalty assessments and taxes". Similarly the local Merchants Association referred to increased personal property yields from the proposed development. The newspapers in substantial measure supported the Authority's tender and stressed the advantage to Newark's taxpayers in having the city unburden itself of its deficit operation. However, the city officials were apparently displeased with the terms of the Authority's proposed agreement of purchase and in September, 1946 the Authority submitted a revised offer of purchase which also fell by the wayside. In December, 1946 the Authority offered to lease the Newark ports on terms comparable to its leasehold offer to New York City for its airports which contemplated a ninety-nine year term lease with the city to receive half the net revenues. While the Authority's lease offers were pending and in negotiation, bills were introduced in New Jersey, as well as New York, to facilitate the Authority's development of marine and air terminals. A public hearing on the bills was held on March 17, 1947 in the New Jersey Senate Chamber and during the course thereof an Authority representative indicated that payment to Newark would be made as a matter of rental rates "in lieu of taxation". A railroad representative appeared at the hearing, apparently to suggest that the broad tax exemption being afforded to the

Authority might operate unfairly as against railroad transportation facilities.

The bills were passed and the one which related particularly to marine terminals became L. 1947, c. 44; R.S. 32:1-35.28 et seq., N.J.S.A. *See also* Unconsol. Laws §§ 6671-6678 (McKinney 1961). The statement attached to it referred to Newark's negotiations with the Authority with respect to its marine terminal and set forth that its purpose was to implement the power of the Authority and municipalities within the port district "to go forward with the plans now in process of preparation if the municipalities or any of them so desire". The bill as enacted empowered any municipality within the port district to consent to the Authority's use of any marine terminal owned by the municipality or of any real or personal property owned by the municipality and "necessary, convenient or desirable in the opinion of the Port Authority for marine terminal purposes" and empowered the municipality to "grant, convey, lease or otherwise transfer to the Port Authority any such marine terminal or real or personal property". R.S. 32:1-35.31, N.J.S.A. A marine terminal was defined as a development consisting of piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings "or other buildings, structures, facilities or improvements, necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers". R.S. 32:1-35.30, N.J.S.A. Marine terminal purposes were defined to mean "the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of marine terminals." The Legislature in section five of the bill explicitly directed that that section and its preceding

sections shall be supplementary to the 1921 compact between New Jersey and New York "and shall be liberally construed to effectuate the purposes of said compact and of the comprehensive plan heretofore adopted by the two States pursuant thereto". R.S. 32:1-35.32, N.J.S.A.

Shortly after the adoption of I. 1947, c. 44 (R.S. 32:1-35.28 et seq., N.J.S.A.) Newark and the Authority entered into their basic agreement with respect to the Newark marine and air terminals. It was dated October 22, 1947, effective March 22, 1948, and set forth a leasing arrangement under which Newark leased its ports to the Authority for a term up to fifty years "for marine and air terminal purposes and incidental purposes". The rental was fixed substantially at $128,000 per annum or a division of net revenues, 75% to the city, 25% to the Authority, whichever was greater. The lease obligated the Authority to assume the city's long term real property leases and also provided that the Authority would "rehabilitate, improve and develop the Newark Marine Terminal" by, *inter alia,* "rehabilitating the existing wharves, buildings, pavements, and trackage" and by providing new transit sheds, bulkheads and wharves and "new public warehouse spaces, and other appropriate and needed facilities". The lease did not mention taxes but there is no question that both the city and the Authority contemplated that the historic tax exemption of the real property would continue so long as it was part of the marine terminal operation; nor is there any doubt that they contemplated a modern, efficient marine terminal which would include not only adequate water berths, transit sheds and transportation facilities, but also adequate areas dedicated to the storage, processing, servicing and distribution of waterborne cargo.

Appendix A

After taking over the operation of the Newark marine terminal, the Authority proceeded with its rehabilitation plans and admittedly converted it into a vibrant, modern seaport which has brought economic benefits not only to the immediate area but also to the State as a whole. The Authority's Director of marine terminals, Mr. Albert Lyle King, testified before the Law Division that in his concept a marine terminal may be viewed as "a complex of wharves, warehouses, open land and miscellaneous buildings for the purpose of generating and transferring cargo between land and water carriers and providing facilities for servicing, processing, and distributing cargo". Acting on this concept, the Authority geared its policy towards terminating those city lease with tenants whose business did not serve to generate waterborne cargo and towards entering into new leases with proper tenants. In Mr. King's language, the tenant "must have substantial amounts of cargo moving in and out by water". At the time of the hearing in the Law Division it appeared that, apart from an isolated instance, all of the buildings and lands at the terminal which were being used for the storage, processing and distribution of merchandise were concerned principally with waterborne products.

For over a decade the Authority continued its development of the marine terminal without interruption and without any legal attack on the tax exempt status of the real property at the terminal which it held under lease from the city. *See* Lloyd v. Vermeulen, *supra,* 22 N. J. at 210, 125 A. 2d 393; State Department of Civil Service v. Clark, 15 N. J. 334, 341, 104 A. 2d 685 (1954). In 1960 the city took the position that certain portions of the leased property were not being used for marine terminal purposes and should therefore be subject to taxation. It

applied to the Essex County Board of Taxation to list the properties in question on the tax rolls as omitted assessments. The Board determined that the properties should be assessed, with the Port of New York Authority listed as "owner". This produced appeals and further litigation which became snarled procedurally and which resulted in an order of this Court remanding all phases of the controversy to the Law Division for a *de novo* hearing and determination. Port of N. Y. Auth. v. Essex Co. Bd. of Taxation, 46 N. J. 51, 214 A. 2d 705 (1965).

After the remand, the city and the Authority made a settlement under which the annual rental payable by the Authority to the city was increased from $128,000 to $1,000,000, with a provision for additional rental upon a formula based on net revenue. The settlement agreement provided that if the city or the Authority should become liable for payment of taxes to the county, the Authority would make the payment and include it in its operation and maintenance expense. Finally, it was stipulated that all litigation between the parties would be dismissed with prejudice, and that the city would designate all of the leased properties on its tax records as tax exempt. In due course this was done. *See* 103 N. J. Super. at 48, 246 A. 2d 509.

In reviewing the city's assessment lists of taxable property for 1967, the Essex County Board of Taxation concluded that certain of the properties leased to the Authority were not used for "marine terminal purposes" but were subleased "to private business concerns for the purpose of producing revenue." It directed that they be placed in nonexempt status and that Newark change its lists accordingly. The city complied and thereafter the

Authority filed its complaint seeking a declaration as to whether the properties were being used for marine terminal purposes and were tax exempt. Newark joined as a party plaintiff and other Essex County municipalities were permitted to intervene. A full trial was held in the Law Division which found that the properties leased by the city to the Authority were tax exempt to the extent that they were being used for marine terminal purposes within the contemplation of L. 1947, c. 44—R.S. 32:1-35.28 et seq., N.J.S.A. *See* 103 N. J. Super. at 52-55, 246 A. 2d 506. However, in determining what were such marine terminal purposes it took a much narrower view than that expressed by Mr. King on the Authority's behalf.

The Law Division classified the properties under the following headings: (a) transit functions, temporary storage and supporting services; (b) warehousing; (c) sales and delivery of merchandise; (d) processing and manufacturing; (e) miscellaneous. Within (a) were various activities very intimately connected with the loading and unloading of vessels including temporary storage in transit sheds and elsewhere, ship and cargo container repairs, etc. Included within (b) were warehouses where lumber, plastics, coffee and numerous other products, largely waterborne, were stored for indefinite periods of time pending delivery to consignees and customers. Included within (c) were lands and buildings used by carriers, importers, etc. for storing largely waterborne inventories for sale and delivery. Included within (d) were lands and buildings where products, largely waterborne, such as lumber, steel, wine, etc., were processed for ultimate distribution. The miscellaneous grouping (e) included a few vacant properties and service buildings such as banks, a

restaurant and premises of the Port of New York Authority, The United States Department of Customs and the Waterfront Commission.

Though the Law Division determined that all of the properties in category (a) and some in (e) were exempt, it held that none of the properties in (b), (c), and (d) was exempt. 103 N. J. Super. at 61, 246 A. 2d 509. In main effect it concluded that only those properties which were devoted to short-term incidental storage or to essential ship-related services were proper marine terminal purposes within the statutory contemplation. Thus the important facilities for warehousing, processing and distributing which were fostered by the Authority to reduce the high terminal costs involved in the transshipment of waterborne cargo were the very ones determined by the Law Division to be outside the scope of the statutory "marine terminal purposes." In holding that warehousing was not one of the marine terminal purposes, the Law Division expressed the thought that the "only justification for the location of the warehouse at the Port is the fact that the stored goods are in the main waterborne, and the existence of these buildings near the piers serves as an economic advantage to the company." But that economic advantage represents the difference between that waterborne cargo coming to the Newark terminal rather than some other terminal, and, as Mr. King pointed out, if a modern marine terminal is to be operated efficiently and successfully it must afford some such economic inducements.

Throughout its opinion the Law Division expressed strangely restrictive notions as to what were proper marine terminal purposes within the statute. Thus, in re-

sponding to the Authority's suggestion that a wholesale lumber yard is appropriate in a marine terminal because it involves a waterborne commodity of such size and bulk as to make it impractical to locate outside the port area, the Law Division expressed the thought that "the conduct of a lumber yard • • • has no necessary or convenient nexus with the accommodation of cargoes or vessels". Similarly it expressed the view that warehouses, though they may be concerned only with waterborne goods "are not necessary or convenient to the accommodation of vessels or their cargoes". Foreign importers and exporters were found by it to be "not engaged in any activity which aids the flow or movement of cargo" and therefore "not within the statutory purposes of a marine terminal". A company, receiving wine in bulk directly from ships which pumped the wine into the company's own storage tanks for later bottling, was found by it to be in a business "not associated with a marine terminal involving the movement of waterborne cargo". And a restaurant within the area, frequented mainly by the local employees, was said by the Law Division to be not "reasonably necessary for the operation of a marine terminal".

Although the history and contemporaneous construction of the marine terminal act (L. 1947, c. 44; R.S. 32:1-35.28 et seq., N.J.S.A.) strongly support the conclusion that the Legislature contemplated tax exemption of the Port Newark properties devoted to marine terminal purposes, reference must be made to R.S. 54:4-3.3, N.J.S. A., for express authority for the exemption. That long standing statute provides that publicly-owned properties "used for public purposes" shall be tax exempt. In Township of

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Hanover v. Town of Morristown, 4 N. J. Super. 22, 66 A. 2d 187 (App. Div. 1949) the court was called upon to determine whether an airport belonging to the Town of Morristown but operated with some leases and concessions was tax exempt under R.S. 54:4-3.3, N.J.S.A. In the course of his opinion favoring the exemption, Judge Bigelow said:

> While an exemption from taxation granted to a private institution is strictly construed, the contrary is true of the exemption held by political bodies, since the latter are not taxed in a doubtful case. So the phrase "used for public purposes" should be liberally construed; it probably includes any municipal enterprise which the legislature has authorized. An airport is clearly a public purpose. R.S. 40:8-1, etc., N.J.S.A. The circumstance that Morristown leases hangar space and the right to service airplanes at the airport, and the fact that the Town has conducted the enterprise at a small profit, do not detract from the public character of the airport. 4 N. J. Super. at 24, 66 A. 2d at 188.

See Walter Reade, Inc. v. Dennis Tp., 36 N. J. 435, 439-441, 177 A. 2d 752 (1962).

In the case at hand, the Law Division determined that R.S. 54:4-3.3, N.J.S.A. was applicable and that the Port Newark properties, to the extent that they were used for marine terminal purposes, were exempt from taxation as publicly owned properties devoted to public use. 103 N. J. Super. at 52, 246 A. 2d 509. In their briefs before us, the Authority, the County Board and the City of Newark

have all expressed their full agreement with this determination although they have pursued their differences as to what properties were being used for marine terminal purposes. Indeed the only dissent as to the applicability of R.S. 54.4-3.3, N.J.S.A. comes from the intervening municipalities which have advanced the contention that "with the exception of the properties occupied by the Port Authority, U. S. Customs, the Waterfront Commission, and perhaps the transit sheds * * *, none of the property is devoted to use for public purposes". They apparently rely, though mistakenly, on cases such as Jamouneau v. Division of Tax Appeals, 2 N. J. 325, 66 A. 2d 534 (1949); Borough of Moonachie v. Port of N. Y. Authority, 38 N. J. 414, 185 A. 2d 207 (1962) and Todd Shipyards Corp. v. Weehawken Tp., 45 N. J. 336, 212 A. 2d 364 (1965).

In *Jamouneau* the City of Newark leased premises to a private concern which built a factory for its own operation. Insofar as the city was concerned there was no public purpose other than receipt of the rental. In rejecting the contention that the property was tax exempt under R.S. 54:4-3.3, N.J.S.A., the Court pointed out that "the use was exclusively private and commercial; there was neither vestige of a present public use nor prospect of a future public use within the terms of the lease." 2 N. J. at 330, 66 A. 2d at 537. This is in clear contract to the Port Authority's position here that its public purpose is to operate the Port Newark marine terminal and that its leases, though they incidentally bring in revenue, are primarily and firmly designed to further the continuing development of the marine terminal as such.

In *Moonachie* the Port of New York Authority built a plant on its land at Teterboro Airport and leased it to

a screen and storm window factory for twenty years. The purpose of the lease was revenue rather than the development of the airport. In rejecting a claimed tax exemption for the factory building, this Court noted that "a tax exemption based upon a statute specifying a particular public use is clearly lost when the use to which the property is put is foreign to the prescribed use and the revenue motive in adopting the use is the primary or exclusive one." 38 N. J. at 427, 185 A. 2d at 214. In *Todd Shipyards* property leased by the Government "for private purposes, and not to further a public purpose of the federal government" (45 N. J. at 346, 212 A. 2d at 369) was held taxable. Commenting on R.S. 54:4-2.12, N.J.S.A., which deals with the taxation of leaseholds but specifically exempts property leased to interstate agencies such as the Port of New York Authority, this Court described the holding in *Moonachie* in terms which pointedly differentiate it from the case now before us:

> Subsection (1) of *section* 10 deals with interstate agencies. As to such agencies, we have held that a lease for private use as distinguished from a lease to private operators in furtherance of the public purpose for which the exemption was granted or a lease incidental to achieving that public purpose, will result in taxation. Moonachie, Borough of, v. Port of New York Authority, 38 N. J. 414, 185 A. 2d 207 (1962). This holding was in keeping with an earlier decision that the exemption was not lost where the lease was made to serve essentially the public purpose the agency was authorized to further. Port of New York Authority v. City of Newark, 20 N. J. 386, 120 A. 2d 18 (1956). 45 N. J. at 344, 212 A. 2d at 368.

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[1] We agree entirely with the Law Division that there is no longer any basis for doubting that a legislatively authorized marine terminal is a "public purpose" within pertinent constitutional and statutory provisions. 103 N. J. Super. at 55, 246 A. 2d 509. *See* Port of N. Y. Authority v. City of Newark, *supra,* 20 N. J. 386, 120 A. 2d 18; Port of New York Auth. v. Hackensack Water Co., 41 N. J. 90, 195 A. 2d 1 (1963). In the former case this Court held that a truck terminal, built by the Port of New York Authority and leased to the Air Force, was being used for public purposes and was tax exempt (20 N. J. at 396-397, 120 A. 2d 18), and in the latter case it described, in passing, the terminal facilities in Port Newark as being "in the public use". 41 N. J. at 95, 195 A. 2d 1. *See* Roe v. Kervick, 42 N. J. 191, 199 A. 2d 834 (1964):

> The concept of public purpose is a broad one. Generally speaking, it connotes an activity which serves as a benefit to the community as a whole, and which, at the same time is directly related to the functions of government. Moreover, it cannot be static in its implications. To be serviceable it must expand when necessary to encompass changing public needs of a modern dynamic society. Thus it is incapable of exact or perduring definition. In each instance where the test is to be applied the decision must be reached with reference to the object sought to be accomplished and to the degree and manner in which the object affects the public welfare. Hoglund v. City of Summit, supra (28 N. J. 540, at p. 549, 147 A. 2d 521); DeArmond v. Alaska State Development Corporation, 376 P. 2d 717 (Alaska

> Sup. Ct. 1962); City of Frostburg v. Jenkins, 215 Md. 9, 136 A. 2d 852, 855 (Ct. App. 1957); Opinion to the Governor, 76 R. I. 249, 69 A. 2d 531 (Sup. Ct. 1949); Rhyne, Municipal Law, § 15-4, p. 341 (1957). 42 N. J. at 207, 199 A. 2d at 842.

See also City of Trenton v. Lenzner, 16 N. J. 465, 469-470, 109 A. 2d 409 (1954), cert. denied, 348 U. S. 972, 75 S. Ct. 534, 99 L. Ed. 757 (1955).

In Courtesy Sandwich Shop v. Port of N. Y. Au., 12 N. Y. 2d 379, 240 N. Y. S. 2d 1, 190 N. E. 2d 402, *appeal dismissed,* 375 U. S. 78, 84 S. Ct. 194, 11 L. Ed. 2d 141 (1963), the New York Court of Appeals upheld the law which authorized the Port of New York Authority to condemn land for the development of the World Trade Center in lower Manhattan. In rejecting a contention that the Center did not satisfy the requirement of public purpose, the court said:

> The Appellate Division has stated that the concept of the World Trade Center is a public purpose. We understand this to mean that any use of the property sought to be condemned that is functionally related to the centralizing of all port business is unobjectionable even though private persons are to be the immediate lessees. The "concept" referred to by the Appellate Division can mean only that. It is the gathering together of all business relating to world trade that is supposed to be the great convenience held out to those who use American ports and which is supposed to attract trade with a resultant stimulus to the economic well-being of the Port of New York. This

> benefit is not too remote or speculative as to render the means chosen to achieve it patently unreasonable; nor is the benefit sought itself an improper concern of government. The history of western civilization demonstrates the cause and effect relationship between a great port and a great city. (See Pirenne, Economic and Social History of Medieval Europe, [Harcourt, Brace & Co., N. Y.].) Fostering harbor facilities has long been recognized by this court as the legitimate concern of government. (Matter of Mayor of City of N. Y., 135 N. Y. 253, 31 N. E. 1043.) 240 N. Y. S. 2d at 5, 190 N. E. 2d at 405.

See Lerch v. Maryland Port Authority, 240 Md. 438, 214 A. 2d 761 (1965).

[2] Town of Harrison v. County of Westchester, 13 N. Y. 2d 258, 246 N. Y. S. 2d 593, 196 N. E. 2d 240 (1963) is relied upon by the Essex County Board of Taxation but it does not at all impair the Authority's position before us. There the County of Westchester leased premises to a private company to operate it as a public airport. The company leased two of its hangars for long periods of time to private companies for their exclusive private uses. The Court of Appeals held that, although the airport was tax exempt to the extent that it was used for service to the public, the two hangars leased to the private companies were not tax exempt. The court distinguished the *Courtesy Sandwich Shop* case *supra* as involving condemnation rather than taxation and concluded, solely as a matter of statutory construction, that the New York Legislature did not intend to exempt parties using hangars for their own private purpose and not for "any

other purpose redounding to the benefit or advantage of the general community." 13 N. Y. 2d at 263, 246 N. Y. S. 2d at 597. 196 N. E. 2d at 243. But, as has already been pointed out, there is every indication that the New Jersey Legislature did intend that the properties at Port Newark should be tax exempt so long as they were being used, as the Authority asserts they were here, in furtherance of the public purposed marine terminal contemplated by the statute. If they were being so used, then clearly any incidental benefits to the private lessees of the Authority would neither impair the public purposes nor remove the tax exemption. *See* Walter Reade, Inc. v. Dennis Tp., *supra,* 36 N. J. at 439, 177 A. 2d 752; Bloomfield v. Div. of Tax Appeals, 84 N. J. Super. 19, 200 A. 2d 793 (App. Div. 1964); *cf.* Clayton v. Kervick, 52 N. J. 138, 155, 244 A. 2d 281 (1968); *see also* Orbison v. Welsh, 242 Ind. 385, 179 N. E. 2d 727 (1962); Carney v. Ohio Turnpike Commission, 167 Ohio St. 273, 147 N. E. 2d 857 (1958); Visina v. Freeman, 252 Minn. 177, 89 N. W. 2d 635 (1958).

[3] We come now to the ultimate question as to whether the properties were actually being used for marine terminal purposes within the meaning of the statute. Mr. King testified that after the Authority took over the marine terminal complex from Newark it proceeded with efforts to relocate certain lessees and terminate certain leases, all with a view towards generating waterborne traffic and rehabilitating the terminal as contemplated by the statutory authorization for its transfer. Thus lessees who were preempting valuable wharf space for their own private merchandise were, to the extent possible, relocated to enable the movement of mass volumes of public cargoes. And lessees whose businesses did not primarily

involve waterborne traffic had their leases terminated as soon as possible. So far as the leasing policy of the Authority was concerned, Mr. King testified that no leases would be executed unless the tenant was substantially connected with waterborne traffic and had substantial amounts of cargo moving in and out by water. So far as the warehousing and industrial activities relating to the waterborne products were concerned, he testified that the Authority's policy was to require reasonably rapid turnovers, to permit processing or fabricating as distinguished from complete manufacturing, and to permit ship and container servicing along with other servicings necessary or convenient and incidental to the effective operation of the terminal. He observed that the activities at Port Newark were normal marine terminal activities throughout the world; and he gave the following illustration of the close relationship between the terminal area's transit and storage or industrial functions:

> Well, take, for example, if you want to use this as an illustration, the frozen meat, which amounts to 150,000 tons of imported meat through Port Newark every year. This has been a very, very highly competitive movement, with the Ports of Norfolk, Baltimore, Philadelphia and Jacksonville all trying to get it, all building warehouses as close to the water as they could get them, and all quoting the lowest possible rates and all to take those ships out of the Port of New York, and they very nearly did. As a matter of fact, they took a half dozen of them before we could catch up to it fast enough to get a cold storage warehouse built in Port Newark and then, having gotten that warehouse, we got

our ships back where they belonged before we had any further losses. But there was a case where it was absolutely imperative competitively to hold that shipping and all of those ships, which is a lot of shipping a year, absolutely imperative that a cold storage plant be in that port area.

As to the trucking differential, believe me, we made all kinds of studies of trucking costs. The trucking differential between handling from a transit shed in Port Newark to the cold storage plant in the industrial section of Port Newark, compared to trucking it to any cold storage warehouse in Newark or elsewhere in the Port of New York, the difference was better than six dollars a ton, and it completely wipes us out. We had to put that warehouse in there to hold that shipping. Those ships represented an awful lot of jobs a year and an awful lot of money into the City of Newark and its business firms each year.

The record firmly establishes the Authority's high goals and the broad effectiveness of its expanding activities. It has invested well over a hundred million dollars to date and has converted the terminal into one of the nation's great seaports. Its determinations from time to time as to what activities should be initiated or continued within the terminal area have involved exercises of discretion but there is nothing to suggest anything other than conscientious exercises which fit well within Mr. King's commercial definition and the common understanding of what a modern marine terminal should fairly encompass. By 1967 all but two of the storage and distribution facilities in the terminal area serviced primarily

waterborne cargo and since then, one of the two is no longer located there. The other has been exeperiencing severe reductions in its waterborne traffic and if that course is not reversed it may safely be assumed that its lease will not be renewed. The properties which are being used for purposes such as ship and container repair, service accommodations to passengers, employees and others in the area, etc., have also been fairly considered by the Authority to be reasonably necessary or convenient to the operation of a modern terminal. And while the evidence is rather meagre as to the few vacant properties, Mr. King testified that the only vacant properties were "those that happen to be in between moves" and they may fairly be viewed as merely incidental to the ordinary operation of the terminal. *Cf.* Borough of Moonachie v. Port of N. Y. Authority, *supra,* 38 N. J. at 428, 185 A. 2d 207.

The Law Division did not question the Authority's goals or the economic benefits which are being brought to the State and its people by its activities at Port Newark. It did, however, consider it incumbent upon itself "to control the expansion of port authority activities via the route of tax exemption" by limiting the exemption "to those uses and purposes which are clearly within the legislative intendment." 103 N. J. Super. at 60, 246 A. 2d at 520. It then proceeded to find that such uses and purposes included only the transit sheds and the essential ship-related services and not the buildings devoted to the warehousing, processing and distribution of waterborne cargo. It appears clear to us that this highly narrowing finding as to the legislative intendment ran directly counter to the recorded statutory history and terminology and must now be rejected.

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It is significant that the Law Division could cite no supporting statutory provision which it might fairly say departed from the expansive grant of delegated legislative power and tax exemption evidenced by the historical materials and the legislative provisions outlined earlier in this opinion. As already been pointed out, the 1921 compact sweepingly defined terminal facilities to include "warehouses" and all kinds of terminal or storage facilities then used or thereafter designed for the "handling, storage, loading or unloading of freight" at steamship terminals. R.S. 32:1-23, N.J.S.A. The 1947 compact, explicitly executed to enable the rehabilitation and expanded operation of the Port Newark terminal complex which then contained warehousing, processing and distribution facilities, embodied definitions of "marine terminals" and "marine terminal purposes" which were broad and flexible rather than narrow and fixed and are to be liberally construed. *See* R.S. 32:1-35.30, N.J.S.A.; R.S. 32:1-35.32, N.J.S.A.; *cf.* Application of Waterfront Comm. of N. Y. Harbor, 39 N. J. Super. 33, 39, 120 A. 2d 504 (Law Div. 1956).

Marine terminal purposes were defined to include the acquisition, rehabilitation, improvement and operation of marine terminals, and, in turn, marine terminals were defined to include developments consisting of wharves, docks, etc. and other buildings, structures, facilities or improvements "necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers". The use of the disjunctive in the phrase "necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers". The use of the disjunctive in the phrase "necessary or convenient" stresses the breadth of the legislative contem-

plation; and the use of comparable phrases throughout the 1921 and supplemental compacts evidences the legislative design to afford comprehensive discretionary powers to the Authority in order that it may successfully carry out its mandates with respect to the operation of the port district. *See, e.g.*, R.S. 32:1-23, N.J.S.A.; R.S. 32:1-33, N.J.S.A.; R.S. 32:1-35.3, N.J.S.A.; R.S. 32:1-35.19, N.J.S.A.; R.S. 32:1-35.28, N.J.S.A.; R.S. 32:1-35.33, N.J.S.A.; R.S. 32:1-35.35, N.J.S.A.; R.S. 32:1-35.52, N.J.S.A.; R.S. 2:1-35.57, N.J.S.A.; R.S. 32:1-132, N.J.S.A.; R.S. 32:1-38, N.J.S.A.; R.S. 32:1-73, N.J.S.A.; R.S. 32:1-96, N.J.S.A.

We are firmly convinced that the statutory definitions, particularly when read with the impelling history, furnish more than adequate legislative support for the Authority's entire operation at the Port Newark terminal complex. The transit functions, the warehousing, processing and distribution activities, and the service buildings all fit well within the statutory reference to facilities and improvements necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers; and such further incidental uses as were referred to in the record before us were not incompatible with the overall furtherance of the operation of the marine terminal and were within the broad discretionary powers of the Authority. All in all we find that the properties at the terminal were without exception used for statutorily authorized purposes, were tax exempt as publicly-owned property devoted to public purposes, and that the Law Division's judgment must be modified accordingly.

[4, 5] The Law Division expressed concern with the increasing removal of real property by public agencies from

the tax rolls of local government. It referred to the "severe impact of such public agency encroachment upon the tax structures of our municipalities" and sought to limit the Authority's tax exemption through a judicial "form of braking action". 103 N. J. Super. at 54, 246 A. 2d at 516. In response, the Authority stresses that the land on which the physical facilities at Port Newark have been constructed was originally marsh land and was not put to productive use until the Port was developed; that the Authority's takeover of the Port relieved Newark of a crushing financial burden and now returns to it, under the settlement arrangements between them, a minimum of $1,000,000 per year in rental payments; and that the other communities in Essex County as well as in the State as a whole have greatly benefitted and are greatly benefiting from the Authority's progressive and expanding commercial development of the Port. However, none of the foregoing appears to be properly addressed to this Court for we, as judges, are not concerned with the wisdom or unwisdom of any statutory grant of tax exemption or with its continuation or termination. Finding, as we have, that the Legislature granted a tax exemption for the entire Port Newark terminal operation, our clear duty, absent a showing of constitutional infirmity, is to apply it. Any concern with the breadth of the exemption and any movement for its restriction must, under our form government, be addressed to the Legislature rather than the Judiciary. *See* Arrow Builders Supply Corp. v. Hudson Terrace Apts., Inc., 15 N. J. 418, 420-421, 105 A. 2d 387 (1954); Matawan Borough v. Monmouth Cty. Tax Bd., 51 N. J. 291, 298, 240 A. 2d 8 (1968).

Modified.

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For modification: Chief Justice WEINTRAUB, and Justices JACOBS, FRANCIS, PROCTOR, HALL, SCHETTINO and HÁNEMAN—7.

Opposed: None.

APPENDIX B

Opinion of the Superior Court of New Jersey, Law Division

103 N. J. Super. 41

THE CITY OF NEWARK AND THE PORT OF NEW YORK AUTHORITY, PLAINTIFFS, v. THE ESSEX COUNTY BOARD OF TAXATION, DEFENDANTS, AND TOWN OF BELLEVILLE, *et al.*, INTERVENING DEFENDANTS.

SUPERIOR COURT OF NEW JERSEY
LAW DIVSISON

Argued May 10, 1968—Decided June 26, 1968.

SYNOPSIS

Action by Port of New York Authority for declaratory judgment that certain lands and buildings leased to it by City of Newark in Port Newark area are exempt from local taxation. The Superior Court, Law Division, Larner, J. S. C., held that with respect to properties leased by Port of New York Authority from the City of Newark pursuant to statutory authority for operation of marine terminal, those properties used for transit functions, temporary storage and supporting services are exempt from taxation while properties used for general warehousing, sales and deliveries of merchandise and for processing and manufacturing are taxable.

Judgment accordingly.

* * *

Mr. Norman N. Schiff for plaintiff, The City of Newark.

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Mr. Francis A. Mulhern, Solicitor, for plaintiff, The Port of New York Authority (*Mr. Sidney Goldstein,* General Counsel, of the New York bar, of counsel).

Mr. Charles H. Landesman, Deputy Attorney General, for defendant, The Essex County Board of Taxation (*Mr. Arthur J. Sills,* Attorney General of New Jersey, attorney).

Mr. Saul A. Wolfe for Intervening Defendants (*Messrs. Skoloff & Wolfe,* attorneys).

LARNER, J. S. C. This action was instituted by the Port of New York Authority (hereinafter port authority) for a declaratory judgment that certain lands and buildings leased by the City of Newark (hereinafter city) to the port authority in the Port Newark area are exempt from local taxation. The city did not ally itself with the position of the port authority, but joined as a party plaintiff for the purpose of achieving a determinative resolution of the issues by judicial declaration.

The particular focus of this litigation is the action of the Essex County Board of Taxation in the form of a resolution dated January 1967 removing the properties in question from the exempt rolls and directing the city to include them in the tax lists for the tax year of 1967.

The Essex County Board of Taxation contends that the properties and their use are not such as to warrant tax exempt status and that the county's share of the city's taxes should be increased accordingly.

All the other municipalities of the County of Essex have intervened in the action by permission of the court in view of their financial interest in the controversy, contending that the properties should be assessable for taxa-

tion and that the exemption from taxation would increase their tax burden to the county.

BACKGROUND HISTORY

Although the issues before the court involve only the determination of taxability for the year 1967, it is important to note the history of the relationship between the city and port authority and their involvement in this tax controversy in past years.

Plans for the development of a marine terminal on Newark Bay date back to the beginning of this century, with study commission reports and legislation leading to public ownership and operation of marine terminals. L. 1911, c. 161; *New Jersey Harbor Commission, Fourth Preliminary Report* (1914) p. 184-188; L. 1916, c. 162; R.S. 40:179-58 *et seq.;* L. 1917, c. 127; R.S. 40:179-46 *et seq.;* L. 1920, c. 176, R.S. 40:179-34 *et seq.*

Pursuant to the authority of the foregoing legislation, the City of Newark developed the marine terminal complex in the Port Newark area, covering approximately 700 acres, including the leasing of docks, lands and buildings to private concerns.

In the interim, New Jersey and New York entered into an interstate compact pursuant to Congressional authority, establishing the Port of New York District and creating the Port of New York Authority as the bi-state agency for the purpose of developing the port district. N.J.S.A. 32:1-2 *et seq.*

In 1945, the City of Newark requested the port authority to undertake a study of all matters relating to Port Newark and Newark Airport for the purpose of consider-

ing the possibility of the port authority undertaking the management and administration. As a result of such a study legislation was adopted in 1947 authorizing the cooperation between the port authority and municipalities in the development of marine terminals. N.J.S.A. 32:1-35.28 *et seq.* Parallel legislation was adopted in the State of New York. *N. Y. Unconsol. Laws,* § 6671 *et seq.* (*McKinney* 1948). Under this legislation, municipalities were empowered "to consent to the use by the port authority of any marine terminal owned by such municipality * * * [and] to grant, convey, lease or otherwise transfer to the port authority any such marine terminal or real or personal property upon such terms as may be determined by the port authority and such municipality" N.J.S.A. 32:1-35.31. In addition, every municipality was also authorized "to vest in the Port Authority the control, operation, maintenance * * * of any marine terminal now owned by such municipality." *Id.*

Instead of conveying the marine terminal properties to the port authority or retaining the port authority as a managing agent of the marine terminal within the ambit of the foregoing legislative authorization, the city entered into a lease agreement with the port authority on October 22, 1947 demising certain premises for a term of 50 years for marine and air terminal purposes. Under this lease, which carried a basic rental of $128,000 per year, the port authority assumed all the existing leases theretofore made by the city, and was authorized to sublet parts of the demised premises for the stated marine and air terminal purposes. Since entering into possession, the port authority has sublet most of the properties involved in the leasehold to private concerns, and that is the factual pattern which existed on October 1, 1966, the key assessment date for the tax year of 1967.

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In 1960, the city concluded that certain of the demised premises were not being used for air and marine terminal purposes and should be subject to ordinary taxation. It therefore applied to the Essex County Board of Taxation to list these properties on the tax rolls as omitted assessments. The same approach applied to the tax years of 1961, 1962, 1963, 1964 and 1965. The Essex County Board determined that the property should be assessed with the port authority listed as "Owner".

This determination inspired appeals to the appellate division and suits in the law and chancery divisions of the Superior Court, which became so "snarled procedurally" that the Supreme Court finally took jurisdiction of all aspects of the complex litigation and remanded the matter to the law division to hear *de novo* all the issues involved in the entire controversy. *Port of New York Authority* v. *Essex County Board of Taxation*, 46 N. J. 51 (1965).

Subsequent to the remand and pending the trial in the law division, the city and the port authority effected a settlement of their differences involving the tax years from 1960 to 1965 inclusive by entering into the "Ninth Supplemental Agreement with Respect to the Newark Marine and Air Terminals," dated December 14, 1966. As part of the settlement agreement, the annual rental was increased from $128,000 to $1,000,000, with a provision for additional rental using a formula based upon a computation of the net revenue of the port authority.

Among other provisions relating to advance payments and retroactive rent for 1966, the agreement provided:

> "In the event the City or the Port Authority, or both, under any law that may hereafter be enacted

or applied, shall be or become subject to and liable for payment to the county in which the demised premises are located of any taxes, assessments or governmental levies or imposts upon or against the demised premises or upon any part or parts thereof then, as between the City and the Port Authority, the Port Authority shall pay the same and such payment by the Port Authority shall be included in the operation and maintenance expense."

It was also stipulated that all litigation pending between the parties would be dismissed with prejudice and that the city would designate on its tax records that all the properties involved in the leasehold are tax exempt.

The agreement went into effect, the prior litigation was dismissed, and the City marked the properties exempt on its tax roles. On a review of the assessments of the city for the taxable year 1967, the Essex County Board of Taxation set aside the exemption and directed that the city restore the demised properties to its tax rolls. The city complied with this directive and thereafter the present suit was brought for declaratory judgment relating to the taxability of the affected properties for the year of 1967. The determination of the taxability of the property in the context of this litigation is a mixed question of law and fact, involving the exploration and delineation of the controlling legal guidelines and the application of those guidelines to the specific properties according to their function and use. It is therefore advisable to discuss first the legal principles which must be applied to the factual patterns revealed by the evidence.

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LEGAL PRINCIPLES

[1] Preliminarily, the court will dispose of the contention made by the defendants that the port authority does not have the standing to bring this action. It is urged that the authority is not the owner of the properties involved and that the tax assessment ordered by the Essex County Board of Taxation is against the ownership interest of the city and not the leasehold interest of the port authority as authorized by N.J.S.A. 54:4-2.3; and that as a consequence the port authority has no right to relief. Although the Authority is not the owner of the properties involved, it has a substantial financial stake in the taxability of the properties through its obligations under the lease with the city; and as a result has the requisite standing to seek declaratory relief. N.J.S. 2A: 16-56. See *Port of New York Authority* v. *Essex County Board of Taxation,* 46 N. J. 51, 53 (1965); *Bergen County* v. *Port of New York Authority,* 32 N. J. 303, 307 (1960).

Any discussion of the taxability of property in the State of New Jersey must commence with the basic legislative mandate that "all property, real and personal, within the jurisdiction of this state not expressly exempted from taxation * * * shall be subject to taxation." N.J.S.A. 54:4-1. The fundamental question therefore is whether or not the properties in question are expressly exempt from taxation.

Initially, it is clear that the legislature has not granted a specific exemption from local property taxation for property owned or used by the port authority as a marine terminal by any of the provisions of the 1947 enabling legislation. (N.J.S.A. 32:1-35.28 *et seq.*).

The port authority however points to the provisions of N.J.S.A. 32:1-144 as a basis for tax exemption:

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> "To the end that * * * cities * * * in the Port of New York District, may not suffer undue loss of taxes and assessments by reason of the acquisition and ownership of property therein by the Port of New York Authority * * * the port authority is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any * * * city * * * in said port district, whereby it will undertake to pay a fair and reasonable sum or sums annually in connection with any marine or inland terminal property owned by it, not in excess of the sum last paid as taxes upon such property prior to the time of its acquisition by the port authority."

The authority cites the cases of *Port of New York Authority* v. *City of Newark,* 20 N. J. 386, 393 (1956) and *Bush Terminal Co.* v. *City of New York, et al.,* 282 N. Y. 306, 26 N. E. 2d 269 (1940) as authority for the contention that the section impliedly grants a tax exemption to property owned and used by the port authority for marine terminal purposes, since the legislature in passing this section must necessarily have assumed that such property was exempt from taxation.

It is true that where the facts bring into play the "in lieu of" tax statute, the courts of last resort of the States of New York and New Jersey have held that their respective legislatures impliedly intended to grant tax exemption to the port authority despite the absence of a specific exemption in the legislation. *Port of New York Authority* v. *City of Newark, supra; Bush Terminal Co.* v. *City of New York, supra.*

[2] These precedents, however, are distinguishable from the present case in two respects. First, the Essex County Board of Taxation did not direct that the property be assessed to the port authority; and second, the ownership of the property in question is not in the port authority, which is a prerequisite of the application of the "in lieu" statute. N.J.S.A. 32:1-144. Hence, it is the conclusion of this court that the reasoning of the foregoing cases cannot serve as a basis for exemption of properties owned by the city and leased to the port authority. This avenue of tax exemption by statutory implication from N.J.S.A. 32:1-144 is not available to the city in the context of the facts herein.

Another basis of exemption advanced by the port authority is the provision of R.S. 40:179-42 which states:

> "Every industrial terminal, and also all additions, extensions and improvements thereof, *erected pursuant to the terms of this act,* and every interest or estate therein, except personal property of any tenant or lessee shall, during the term of any lease thereof made as herein provided, be exempt from all taxes and assessments within this state." (Emphasis supplied.)

[3] This section of the statute was part of the comprehensive legislation passed in 1920 authorizing any city fronting upon navigable waters to establish an industrial terminal including docks, warehouses, ferries, terminals and shipping and industrial facilities, and to acquire lands for said purpose. It is urged that since the properties involved in this litigation were initially operated by the city pursuant to R.S. 40:179-34 prior to the time when port authority went into possession under its lease and

since the provisions of R.S. 40:179-35 expressly permit a city to lease the industrial terminal facility for a term not exceeding fifty years, the tax exemption provided by R.S. 40:179-42 should apply to the port authority.

An analysis of this legislation involving industrial terminals reveals that it is not the applicable statute which controls the operation of the marine terminal in port Newark since 1947. It was the legislation under which the port was operated by the city between 1920 and 1947. However, when the city relinquished possession and control to the Port Authority by the lease of 1947, it did so pursuant to the legislation adopted for the very purpose of authorizing the arrangement between the city and the port authority, namely N.J.S.A. 32:1-35.28 *et seq.* See *Port of New York Authority* v. *Hackensack Water Co.*, 41 N. J. 90, 95.

Any doubt as to the identification of the enabling legislation which controls the operation of the port by the port authority was resolved by the parties themselves in their original lease arrangement in the following language:

> "WHEREAS, by the Treaty of April 30, 1921, creating the Port of New York Authority, the two said states granted to the Port Authority full power and authority to purchase, construct, lease and operate marine terminals within the Port of New York District, and by Chapters Forty-four [N.J.S.A. 32: 1-35.28, *et seq.*] and Six Hundred and Thirty-one, respectively, of the Laws of New Jersey and the Laws of New York of 1947, said two states have authorized and empowered cities and other municipalities in the Port of New York District to cooperate with the Port Authority in the develop-

ment of marine terminals and to consent to the use by the Port Authority of marine terminals owned by them and of any real and personal property owned by them, * * *."

In Section I, *Definitions,* the following also appears:

"'Marine Terminal' and 'Newark Marine Terminal' shall mean a Marine Terminal as defined in Section Three of Chapter Forty-four of the Laws of New Jersey of 1947, [N.J.S.A. 32:1-35.20] * * *."

By the foregoing, the city and the port authority acknowledged in 1947 that the operation of the port by the port authority was accomplished pursuant to the authority and terms of the recently adopted legislation, namely Chapter 44 of the Laws of 1947 (N.J.S.A. 32:1-35.28 *et seq.*) and not the pre-existing legislation adopted in 1920 consisting of Chapter 176 of the Laws of 1920 (R.S. 40: 179-34 *et seq.*). Hence the exemption set forth in R.S. 40:179-42 which by its terms is limited to industrial terminals erected pursuant to the 1920 legislation is not applicable to the current operation of the port by the port authority, and cannot serve as the basis of statutory exemption claimed by the authority.

[4, 5] The port authority advances as a final ground of tax exemption the provision of N.J.S.A. 54:4-3.3 which exempts from taxation the property of taxing districts used for "public purposes." It is clear that property owned by a municipality, as is the case here, is exempt from taxation, if and only if that property is used for "public purposes." *Jamouneau* v. *Division of Tax Appeals,* 2 N. J. 325 (1949); *Teaneck Township* v. *Division*

of Tax Appeals, 10 N. J. Super. 171 (App. Div. 1950). In fact, public use is a necessary prerequisite in order to bring publicly owned property within constitutional standards for tax exemption. *New Jersey Turnpike Authority* v. *Washington Township,* 16 N. J. 38, 44 (1954); Const. Art. VIII, Sec. 1, par. 1. Since the statute requires both public ownership and public use to qualify the property for tax exemption, the mere receipt of rentals from a private lessee with financial benefits to the public agency does not transform a private use into a public use. *Jamouneau* v. *Division of Tax Appeals, supra,* 2 N. J., at p. 333. As observed by Justice Francis in *Borough of Moonachie* v. *Port of New York Authority,* 38 N. J. 414 (1962):

> "[P]roperty owned by a public agency but employed *primarily* to obtain revenue or profit through private business uses is not immune from taxation, but property employed primarily for a public use does not lose immunity because the agency *incidentally* derives some private business income from it." (at p. 426)

[6] Although tax exemptions sought by private owners are strictly construed and will not be extended beyond the ascertainable intention of the Legislature, *Deubel* v. *Kervick,* 33 N. J. 568, 574 (1960), our courts have adopted a more liberal attitude toward tax exemptions sought by governmental agencies. *Walter Reade, Inc.* v. *Dennis Township,* 36 N. J. 435, 440 (1962); *Township of Hanover* v. *Town of Morristown,* 4 N. J. Super. 22, 24 (App. Div. 1949). In cases involving governmental agencies, the requisite of use for public purpose is accorded a liberal

construction—one reasonably broad to encompass the legislative aims. *Id.*

This so-called liberal construction however must be tempered by a countervailing policy consideration dictated by the increasing removal of real property by public agencies from the tax rolls of local governments. In *Moonachie, supra,* the Supreme Court pointed out:

> "Recent years have witnessed also a steadily increasing taking of private property by both state and federal governments and various agencies thereof for public purposes, thus removing it from the tax rolls and casting a proportionately greater share of support of state and local government upon the private property owner. * * * Exemption of industrial property from taxation or its removal from tax rolls causes a particularly severe impact upon local government. Such property is a vital part of the tax base in most communities since the tax revenue derived from it, as distinguished from residential property, usually greatly exceeds the cost of providing local public services. And it may be said that there are no substantial differences, either in the nature of their activity or in the economic effects upon local communities, between privately owned industrial plants, and buildings owned by the Port Authority and leased for industrial operations unrelated to air terminal purposes." (38 N. J., at p. 423)

The severe impact of such public agency encroachment upon the tax structures of our municipalities requires a form of braking action by our courts so as to permit ex-

emptions only for such uses as are clearly within the intendment by the legislature.

Thus, the applicable guideline is whether the uses made of the involved properties as of October 1, 1966 were true public uses within the intent of the Legislature when it authorized the City of Newark to lease to the port authority the Port Newark complex for the development of a marine terminal.

The intervening municipalities of Essex County urge that the use of the properties for marine terminal purposes, even within the legislative authorization, is not equated with "public use" as required by N.J.S.A. 54:4-3.3. The port authority contends that the properties in question are being used for a public purpose since they are being used as a marine terminal pursuant to N.J.S.A. 32:1-35.28 *et seq.* The other parties concede that a marine terminal is a public use and that the ultimate issue presented by this litigation is whether the properties are used for marine terminal purposes.

It is manifest from the legislation authorizing the development of air terminals (N.J.S.A. 32:1-35.1 to 32:1-35.19) and marine terminals (N.J.S.A. 32:1-35.28 to 32:1-35.36) and the history leading to this legislation that the legislature of our state mandated that the use of property by the port authority for the purposes defined therein constitutes a public use. See *Port of New York Authority* v. *City of Newark,* 20 N. J. 386 (1956). Moreover, the Supreme Court in *Port of New York Authority* v. *Hackensack Water Co.,* 41 N. J. 90 (1963) referred to the Port Newark operation as follows:

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> "Two small items here involved relate to the Port Newark Marine Terminal, operated by the Port Authority under a lease from its owner, the City of Newark, pursuant to legislation of the States of which the New Jersey counterpart is N.J.S.A. 32:1-35.28 *et seq. These terminal facilities are in the public use.*" (Emphasis supplied). (at p. 95)

[7] As a consequence, there is no doubt that a "marine terminal" purpose is also a "public purpose"; and that properties at Port Newark operated by the port authority under its lease with the City which are used for marine terminal purposes are tax exempt. Conversely, such properties which are not used for "marine terminal" purposes are subject to ordinary taxation, regardless of public ownership by the City and public operation by the port authority.

It is also manifest that these consequences follow regardless of the fact that the properties may be sub-let by the port authority to private concerns. It is the use and purpose which control within the framework of the public ownership in this case, and not the identity of the particular individual or corporation carrying out that purpose under lease or sublease from the city. *Port of New York Authority* v. *City of Newark, supra,* 20 N. J., at p. 395; *Walter Reade, Inc.* v. *Dennis Township, supra; Town of Bloomfield* v. *Division of Tax Appeals,* 84 N. J. Super. 19 (App. Div. 1964).

There thus remains for consideration the nature, type and extent of the business activities which are encompassed within the designation "marine terminal", in order to test the taxability of the particular property uses reflected by the evidence.

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The statutory definition of a marine terminal is that contained in the Marine Terminal Act (N.J.S.A. 32:1-35.28 *et seq.*) which authorized the agreement between the city and the port authority, and which was incorporated by reference in the lease of October 22, 1947. N.J.S.A. 32:1-35.30 provides in pertinent part:

> "'Marine terminals' shall mean developments, consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings or other buildings, structures, facilities or improvements, necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers.
>
> "'Marine terminal purposes' shall mean the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of marine terminals."

A further relevant definition appears in the basic compact between the States of New York and New Jersey which created the Port of New York Authority. N.J.S.A. 32:1-23 provides in pertinent part:

> "Terminal facility' shall include wharves, piers, slips, ferries, docks, dry docks, bulkheads, dockwalls, basins, carfloats, floatbridges, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances, and every kind of terminal or storage facility now in use or hereinafter designed for use for the handling, storage, loading or unloading of freight at steamship * * * terminals."

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In the "Principles to Govern the Development" of the Port of New York, the Legislature proclaimed (N.J.S.A. 32:1-26):

> "First—That terminal operations within the Port district, so far as economically practical, should be unified;
>
> "Second—That there should be consolidation of shipments at proper classification points, so as to eliminate duplication of effort, inefficient loading of equipment, and realize reduction in expenses."

It is evident that the legislative design contemplated that the port authority would develop the port for the substantial benefit of the surrounding communities and their citizens; and that all activities reasonably necessary for the operation of a marine terminal would properly represent public uses.

[8] It is also evident that the operations encompassed by the statutory definition of a marine terminal involve lands, structures and buildings utilized in the flow and movement of water-borne cargoes and passengers. And this includes not only the usual land accoutrements for shipping, such as piers, docks, wharves, railroad connections, sidings, etc., but also such "buildings, structures, facilities or improvements, necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers."

[9, 10] The permissible uses should be construed broadly in order to effectuate the basic purposes of the Bi-Sate Compact and the creation of the port authority, N.J.S.A. 32:1-35.32. However, such liberal construction can only be

exercised within the limits of the statutory definition of the activities and functions of a marine terminal, which have as their common denominator the accommodation to the flow and movement of water-borne cargoes and passengers. Thus, even if the land, building or structure is not used for one of the enumerated purposes, it is nevertheless within the authorized uses if it is reasonably necessary or convenient for the efficient operation of a marine terminal. *In re Township of Moon,* 387 Pa. 144, 127 A. 2d 361, 364 (1956). However, unless the use is one which is convenient or necessary for the operation of a marine terminal as a public instrumentality, it cannot qualify as a public use for tax exemption despite its incidental benefit to the public and to the public agency. *Town of Harrison* v. *County of Westchester,* 13 N. Y. 2d 253, 246 N. Y. S. 2d 593, 196 N. E. 2d 240 (1963); *Borough of Moonachie* v. *Port of New York Authority, supra.*

The evidence reveals that the uses of the involved properties are mainly concerned with water-borne imports and exports, which fall into the following general functional categories: (1) transit functions, temporary storage, and supporting services; (2) warehousing; (3) sales and delivery of merchandise; (4) processing and manufacturing. In addition, there are some uses which cannot be categorized and which must be analyzed on an individual basis.

In any event, the major areas of dispute arise with properties which are utilized by private companies under sublease from the port authority for the conduct of ordinary business activities involving the sale and delivery of goods to customers, warehousing of goods, and the processing and manufacturing of products.

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The port authority contends that the uses of the properties in October 1966 were substantially the same uses which existed in October 1947 when the port authority entered into the lease with the city; and that as a result thereof, the court should declare such uses to be encompassed within the definition of "marine terminal." It urges that the legislature adopted the enabling legislation (N.J.S.A. 32:1-35.28 *et seq.*) in apparent recognition of the existing facilities and uses in the Port Newark complex operated by the city and that it thereby sanctioned the continuation of those uses as part and parcel of a marine terminal by the port authority under its contemplated lease with the city.

Such an argument presupposes that the legislation in question applies by its terms solely to the port of the city of Newark and that the statute is a special one for that city and its peculiar characteristics and problems. Although the impending lease with the City of Newark may have inspired the passage of the legislation, by its terms the statute applies to all municipalities within the Port of New York District. The statute does not purport in express language to equate the status quo of property uses in the City of Newark with the permissible uses of a marine terminal. It rather defines in explicit terms the meaning of a marine terminal.

[11] It is the duty of this court to construe the legislative intent within the limitation of the terminology utilized in the finalized text of the statute, and not within conjectural assertions as to the unexpressed intentions of the legislators when the statute was adopted. *Petrangeli* v. *Barrett,* 33 N. J. Super. 378, 386 (App. Div. 1954); *Dumont Lowden, Inc.* v. *Hansen,* 38 N. J. 49, 56 (1962).

[12] Hence the court in passing upon the current property uses on October 1, 1966 is not controlled or persuaded by the nature of the uses in 1947. Neither the legislature by statute nor a court by judicial determination has frozen the definition of marine terminals to the existing uses during the period pre-existing the port authority lease. The court must make independent findings based upon the factual pattern of 1966, as controlled by the statutory definition of marine terminals.

In a further effort to expand the ambit of functions and uses involved in the operation of a marine terminal, the port authority offered testimony of two experts, trained and experienced in the management and operation of ports and marine terminals. One of these experts, Albert Lyle King, an employee of the port authority, offered his own definition of a marine terminal as follows:

> "A marine terminal, in my concept, is a complex of wharves, warehouses, open land and miscellaneous buildings for the purpose of *generating* and transferring cargo between land and water carriers and providing facilities for servicing, *processing* and distributing cargo."

By this definition as elaborated by his other testimony, Mr. King took the position that one of the important goals of the authority in the operation of the Newark Marine Terminal is to generate shipping business by attracting companies to the port area who are engaged in export and import activities. He asserted that such concerns should be considered part of a marine terminal and permitted to operate within the leased area of the port in order to compete with ports of other cities such as Philadelphia and

Baltimore. It was his conception that these businesses should be located in the port and therefore properly within the operation of a marine terminal so that the port may develop into a bustling trade center which would in turn generate substantial shipping activity. It is for that reason that he included in his definition of a marine terminal the use of land and buildings for the purpose of *generating* cargo.

It was also because of this approach that the expert included within the definition of a marine terminal, uses involving the processing of fabricating of goods. It was his opinion that such an industrial activity is properly a marine terminal purpose so long as the goods are placed in water-borne commerce through importation or exportation. He also concluded that concerns engaged in the export and import business selling merchandise which is water-borne qualify as appropriate users of port properties within the limits of a marine terminal.

There is no doubt that the basic goals and motives of this expert and his employer, the port authority, are laudable from the viewpoint of the business development of the Port and the economic welfare of the city. These goals however are not the controlling test of taxability. They may be efficient and profitable standards for the development of a marine terminal when unhampered and unlimited by legislative controls. However, the desires and goals of the port authority in its ever-expanding activities cannot run counter to the legislative mandate. Definitions of the port authority or its experts based upon their best business judgment are of no legal significance on the issues at hand, which must be tested by the limitations of the statutory definition and not by the business judgment of the port authority executives and experts.

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[13] It is therefore incumbent upon the court to control the expansion of port authority activities via the route of tax exemption by limiting this extraordinary privilege only to those uses and purposes which are clearly within the legislative intendment. Public use is not synonymous with port authority use; it is synonymous with the uses designated by the legislature for a marine terminal.

[14] Based upon this standard of legislative construction, which of the properties involved come within the statutory requirement that a marine terminal encompasses buildings, structures and facilities "necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers"? The evidence of the uses and purposes of the particular properties on October 1, 1966 is not in substantial dispute. As far as possible, it would be appropriate to consider the specific properties in the applicable classes of the functional categories outlined above.

[The court proceeds to consider the taxability of each of the involved properties within the functional categories set forth *supra*. Generally, the court arrives at the following conclusions:

1. Properties used for transit functions, temporary storage and supporting services are exempt from taxation.

2. Properties used for general warehousing are taxable.

3. Properties used for sales and delivery of merchandise are taxable.

4. Properties used for processing and manufacturing are taxable.

5. Miscellaneous properties—some taxable, some exempt (as set out in filed opinion).]

APPENDIX C

Judgment and Mandate on Modification of Supreme Court of New Jersey

(Filed—June 25, 1969.)

It is hereupon ordered and adjudged that the judgment of the Law Division, Superior Court be and the same hereby is modified; and it is further ordered that the record be remitted to the Law Division, Superior Court to be there proceeded with in accordance with the rules and practice relating to that court, consistent with the opinion of this Court.

WITNESS the Honorable Joseph Weintraub, Chief Justice.

Judgment Entered: June 25, 1969.

Mandate Issued: July 5, 1969.

JOHN H. GILDEA
Clerk of the Supreme Court

APPENDIX D

Relevant Statutes

ARTICLE 1 COMPACT OF APRIL 30, 1921

Revision Note

By L.1921, c. 151, p. 412 (1924 Suppl. § *161-3 to *161-6) New Jersey authorized J. Spencer Smith, DeWitt Van Buskirk and Frank R. Ford, together with the attorney general, to enter into the compact with the state of New York. The compact as set forth in this article was adopted by New York and is contained in Laws of New York 1921, c. 154, p. 492, McKinney Unconsol. Laws §§ 6401-6423.

Section 4 of L.1921, c. 151 (1924 Suppl. § *161-6), authorized the commissioners to apply for congressional approval of the compact, which was granted by Public Resolution No. 17, 67th Congress, S.J.Res. 88, 42 Stat. 174.

32:1-1. Preamble

Whereas, In the year 1834 the states of New York and New Jersey did enter into an agreement fixing and determining the rights and obligations of the two states in and about the waters between the two states, especially in and about the bay of New York and the Hudson river; and

Whereas, Since that time the commerce of the port of New York has greatly developed and increased and the territory in and around the port has become commercially one center or district; and

Appendix D

Whereas, It is confidently believed that a better co-ordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey; and

Whereas, The future development of such terminal, transportation and other facilities of commerce will require the expenditure of large sums of money, and the cordial co-operation of the states of New York and New Jersey in the encouragement of the investment of capital, and in the formulation and execution of the necessary physical plans; and

Whereas, Such result can best be accomplished through the cooperation of the two states by and through a joint or common agency;

Now, Therefore, The said states of New Jersey and New York do supplement and amend the existing agreement of 1834 in the following respects:

32:1-2. Co-operation pledged

ARTICLE I.

They agree to and pledge, each to the other, faithful co-operation in the future planning and development of the port of New York, holding in high trust for the benefit of the nation the special blessings and natural advantages thereof.

32:1-4. Port authority created

ARTICLE III.

There is hereby created "The Port of New York Authority" (for brevity hereinafter referred to as the "port

authority"), which shall be a body corporate and politic, having the powers and jurisdiction hereinafter enumerated, and such other and additional powers as shall be conferred upon it by the legislature of either state concurred in by the legislature of the other, or by act or acts of congress, as hereinafter provided.

32:1-7. GENERAL POWERS OF PORT AUTHORITY; STATE AND MUNICIPAL PROPERTY AND BONDED INDEBTEDNESS PROTECTED

ARTICLE VI.

The port authority shall constitute a body, both corporate and politic, with full power and authority to purchase, construct, lease and/or operate any terminal or transportation facility within said district; and to make charges for the use thereof; and for any of such purposes to own, hold, lease and/or operate real or personal property, to borrow money and secure the same by bonds or by mortgages upon any property held or to be held by it. No property now or hereafter vested in or held by either state, or by any county, city, borough, village, township or other municipality, shall be taken by the port authority, without the authority or consent of such state, county, city, borough, village, township or other municipality, nor shall anything herein impair or invalidate in any way any bonded indebtedness of such state, county, city, borough, village, township or other municipality, nor impair the provisions of law regulating the payment into sinking funds of revenues derived from municipal property, or dedicating the revenues derived from any municipal property to a specific purpose.

The powers granted in this article shall not be exercised by the port authority until the legislatures of both states

shall have approved of a comprehensive plan for the development of the port as hereinafter provided.

HISTORICAL NOTE

REVISION NOTE:

A comprehensive plan was adopted and approved by both states as contained in §§ 32:1-26 to 32:1-31 of this title.

32:1-9. LAWS APPLICABLE TO PUBLIC UTILITIES IN EFFECT

ARTICLE VIII.

Unless and until otherwise provided, all laws now or hereafter vesting jurisdiction or control in the public service commission, or the public utilities commission, or like body, within each state respectively, shall apply to railroads and to any transportation, terminal or other facility owned, operated, leased or constructed by the port authority, with the same force and effect as if such railroad, or transportation, terminal or other facility were owned, leased, operated or constructed by a private corporation.

32:1-10. MUNICIPAL POWERS NOT IMPAIRED

ARTICLE IX.

Nothing contained in this agreement shall impair the powers of any municipality to develop or improve port and terminal facilities.

32:1-11. PLANS TO BE ADOPTED

ARTICLE X.

The legislatures of the two states, prior to the signing of this agreement, or thereafter as soon as may be practicable, will adopt a plan or plans for the comprehensive development of the port of New York.

Appendix D

32:1-12. SUPPLEMENTS AND AMENDMENTS TO COMPREHENSIVE PLAN

ARTICLE XI.

The port authority shall from time to time make plans for the development of said district, supplementary to or amendatory of any plan theretofore adopted, and when such plans are duly approved by the legislatures of the two states, they shall be binding upon both states with the same force and effect as if incorporated in this agreement.

32:1-13. RECOMMENDATIONS TO LEGISLATURES AND CONGRESS

ARTICLE XII.

The port authority may from time to time make recommendations to the legislatures of the two states or to the congress of the United States, based upon study and analysis, for the better conduct of the commerce passing in and through the port of New York, the increase and improvement of transportation and terminal facilities therein, and the more economical and expeditious handling of such commerce.

32:1-22. WITHDRAWAL FROM AGREEMENT

ARTICLE XXI.

Either state may by its legislature withdraw from this agreement in the event that a plan for the comprehensive development of the port shall not have been adopted by both states on or prior July 1, 1923; and when such withdrawal shall have been communicated to the governor of the other state by the state so withdrawing, this agreement shall be thereby abrogated.

Appendix D

32:1-23. DEFINITIONS; EXECUTION OF COMPACT

ARTICLE XXII.

Definitions—The following words as herein used shall have the following meaning: "Transportation facility" shall include railroads, steam or electric, motor truck or other street or highway vehicles, tunnels, bridges, boats, ferries, carfloats, lighters, tugs, floating elevators, barges, scows or harbor craft of any kind, aircraft suitable for harbor service, and every kind of transportation facility now in use or hereafter designed for use for the transportation or carriage of persons or property. "Terminal facility" shall include wharves, piers, slips, ferries, docks, dry docks, bulkheads, dockwalls, basins, carfloats, floatbridges, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances, and every kind of terminal or storage facility now in use or hereafter designed for use for the handling, storage, loading or unloading of freight at steamship, railroad or freight terminals. "Railroads" shall include railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, power houses, substations, lines for the transmissions of power, car barns, shops, yards, sidings, turnouts, switches, stations and approaches thereto, cars and motive equipment. "Facility" shall include all works, buildings, structures, appliances and appurtenances necessary and convenient for the proper construction, equipment, maintenance and operation of such facility or facilities or any one or more of them. "Real property" shall include land under water, as well as uplands, and all property either now commonly or legally defined as real property or which may hereafter be so defined. "Personal property" shall include choses in action and all other

property now commonly or legally defined as personal property or which may hereafter be so defined. "To lease" shall include to rent or to hire. "Rule or regulation", until and unless otherwise determined by the legislatures of both states, shall mean any rule or regulation not inconsistent with the constitution of the United States or of either state, and, subject to the exercise of the power of congress, for the improvement of the conduct of navigation and commerce within the district, and shall include charges, rates, rentals or tolls fixed or established by the port authority; and until otherwise determined as aforesaid, shall not include matters relating to harbor or river pollution. Wherever action by the legislature of either state is herein referred to, it shall mean an act of the legislature duly adopted in accordance with the provisions of the constitution of the state.

Plural or singular.—The singular wherever used herein shall include the plural.

Consent, approval or recommendation of municipality. How given.—Wherever herein the consent, approval or recommendation of a "municipality" is required, the word "municipality" shall be taken to include any city or incorporated village within the port district, and in addition in the state of New Jersey any borough, town, township or any municipality governed by an improvement commission within the district. Such consent, approval or recommendation whenever required in the case of the city of New York shall be deemed to have been given or made whenever the board of estimate and apportionment of said city or any body hereafter succeeding to its duties shall by majority vote pass a resolution expressing such consent, approval or recommendation; and in the case of any

municipality now or hereafter governed by a commission, whenever the commission thereof shall by a majority vote pass such a resolution; and in all other cases whenever the body authorized to grant consent to the use of the streets or highways of such municipality shall by a majority vote pass such a resolution.

32:1-24. ATTESTATION

In Witness Whereof we have hereunto set our hands and seals under chapter 154 of the Laws of 1921 of the state of New York and chapter 151 of the Laws of 1921 of the state of New Jersey, this thirtieth day of April, 1921.

WILLIAM R. WILLCOX	(L.S.)
EUGENIUS H. OUTERBRIDGE	(L.S.)
CHARLES D. NEWTON	(L.S.)
J. SPENCER SMITH	(L.S.)
DEWITT VAN BUSKIRK	(L.S.)
FRANK R. FORD	(L.S.)
THOMAS F. MCCRAN	(L.S.)

In the presence of:

NATHAN L. MILLER

WALTER E. EDGE

ALFRED E. SMITH

CHARLES S. WHITMAN

WILLIAM M. CALDER

LEWIS H. POUNDS

Appendix D

CLARENCE E. CASE

D. P. KINGSLEY

IRVING T. BUSH

ARTHUR N. PIERSON

JULIUS HENRY COHEN

in whose presence Messrs. Willcox, Outerbridge, Smith, Van Buskirk, Ford and McCran signed in the great hall of the chamber of commerce in the city of New York on the thirtieth day of April, 1921. Attorney General Newton being at that time absent from the city, he signed on the sixth day of May, 1921, at the chamber, in the presence of:

WILLIAM LEARY CHAS. T. GWYNNE.

APPENDIX E

Relevant Statutes

ARTICLE 2. COMPREHENSIVE PLAN FOR THE DEVELOPMENT OF THE PORT OF NEW YORK

32:1-25. PREAMBLE

Whereas, The states of New York and New Jersey, on the thirtieth of April, one thousand nine hundred and twenty-one, pursuant to chapter 154 of the Laws of 1921 of New York and chapter 151 of the Laws of 1921 of New Jersey,[1] did enter into a compact or agreement which pledged the two states to faithful co-operation in the future planning and development of the port of New York, and which, furthermore, created the Port of New York District, as therein described, and the Port of New York Authority, a body politic and corporate, as an instrumentality or agency of the two states to effectuate such pledge of co-operation; and

Whereas, The said compact or agreement provides in article X[2] thereof that the "legislatures of the two states, prior to the signing of this agreement, or thereafter as soon as may be practicable, will adopt a plan or plans for the comprehensive development of the port of New York";

Now, therefore (the state of New York by appropriate legislation concurring therein), the following be and it is hereby adopted as the comprehensive plan for the development of the port of New York, under and pursuant to said compact or agreement:

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[1] Sections 32:1-1 to 32:1-24.

[2] For Article X of the compact, see § 32:1-11.

Appendix E

Historical Note

Revision Note

This act, together with the complementary New York act, c. 43, Laws of New York of 1922, McKinney Uncon-sol.Laws, §§ 6451-6468, constitutes part of the agreement between the states of New Jersey and New York relating to the port authority.

Title of Act

An Act by which the state of New Jersey agrees with the state of New York upon the comprehensive plan for the development of the port of New York, pursuant to the compact authorized by the two states and signed April thirtieth, one thousand nine hundred and twenty-one, and consented to and approved by congress and the president of the United States, August twenty-third, one thousand nine hundred and twenty-one, and authorizing and empowering the Port of New York Authority to effectuate the same and making an appropriation therefor. L.1922, c. 9, p. 25.

Compact of 1921

For compact of April 30, 1921, see §§ 32:1-1 to 32:1-24.

Consent of Congress

The consent of Congress and authority to the Port of New York Authority to execute the comprehensive plan approved by the States of New York and New Jersey by Laws of New York 1922, c. 43, and Laws of New Jersey 1922, c. 9, was given by Public Resolution No. 66, 67th Congress, 1922, 42 Stat. 822.

Appendix E

32:1-26. PRINCIPLES TO GOVERN THE DEVELOPMENT

Principles to Govern the Development:

First—That terminal operations within the port district, so far as economically practicable, should be unified;

Second—That there should be consolidation of shipments at proper classification points, so as to eliminate duplication of effort, inefficient loading of equipment, and realize reduction in expenses;

Third—That there should be the most direct routing of all commodities, so as to avoid centers of congestion, conflicting currents and long truck hauls;

Fourth—That terminal stations established under the comprehensive plan should be union stations, so far as practicable;

Fifth—That the process of co-ordinating facilities should, so far as practicable, adapt existing facilities as integral parts of the new system, so as to avoid needless destruction of existing capital investment and reduce so far as may be possible the requirements for new capital; and endeavor should be made to obtain the consent of local municipalities within the port district for the coordination of their present and contemplated port and terminal facilities with the whole plan;

Sixth—That freight from all railroads must be brought to all parts of the port wherever practicable without cars breaking bulk, and this necessitates tunnel connection between New Jersey and Long Island, and tunnel or bridge connections between other parts of the port;

Seventh—That there should be urged upon the federal authorities improvement of channels, so as to give access for that type of water-borne commerce adapted to the various forms of development which the respective shore fronts and adjacent lands of the port would best lend themselves to;

Eighth—That highways for motor truck should be laid out so as to permit the most efficient interrelation between terminals, piers and industrial establishments not equipped with railroad sidings, and for the distribution of building materials and many other commodities which must [must] be handled by trucks; these highways to connect with existing or projected bridges, tunnels and ferries;

Ninth—That definite methods for prompt relief should be devised which can be applied for the better co-ordination and operation of existing facilities while larger and more comprehensive plans for future development are being carried out. L.1922, c. 9, § 1, p. 26 (1924 Suppl. §*161-17).

32:1-32. CHANGES IN COMPREHENSIVE PLAN

The right to add to, modify or change any part of the foregoing comprehensive plan is reserved by each state, with the concurrence of the other. L.1922, c. 9, § 7, p. 32 (1924 Suppl. §*161-23).

32:1-33. DEVELOPMENT OF PORT; FEDERAL ASSISTANCE; MUNICIPAL CO-OPERATION; SECURITIES TAX EXEMPT; MUNICIPAL CORPORATE INSTRUMENTALITY

The Port of New York Authority is hereby authorized and directed to proceed with the development of the port

of New York in accordance with said comprehensive plan as rapidly as may be economically practicable and is hereby vested with all necessary and appropriate powers not inconsistent with the constitution of the United States or of either state, to effectuate the same, except the power to levy taxes or assessments. It shall request the congress of the United States to make such appropriations for deepening and widening channels and to make such grants of power as will enable the said plan to be effectuated. It shall have power to apply to all federal agencies, including the interstate commerce commission, the war department, and the United States shipping board, for suitable assistance in carry [carrying] out said plan. It shall co-operate with the state highway commissioners of each state so that trunk line highways as and when laid out by each state shall fit in with said comprehensive plan. It shall render such advice, suggestion and assistance to all municipal officials as will permit all local and municipal port and harbor improvements, so far as practicable, to fit in with said plan. All municipalities within the district are hereby authorized and empowered to co-operate in the effectuation of said plan, and are hereby vested with such powers as may be appropriate or necessary so to co-operate. The bonds or other securities issued by the port authority shall at all times be free from taxation by either state. The port authority shall be regarded as the municipal corporate instrumentality of the two states for the purpose of developing the port and effectuating the pledge of the states in the said compact, but it shall have no power to pledge the credit of either state or to impose any obligation upon either state, or upon any municipality, except as and when such power is expressly granted by statute, or the consent by any such municipality is given. L.1922, c. 9, § 8, p. 32 (1924 Suppl. §*161-24).

APPENDIX F

Relevant Statutes

ARTICLE 8. PAYMENTS IN LIEU OF TAXES

Historical Note

Revision Note. This act, together with the complementary New York act, c. 553, Laws of New York of 1931, constitutes part of the agreement between the states of New Jersey and New York relating to the port authority.

32:1-144. Agreement between port authority and municipalities; amount and manner of payments

To the end that counties, cities, boroughs, villages, towns, townships and other municipalities in the Port of New York District, may not suffer undue loss of taxes and assessments by reason of the acquisition and ownership of property therein by the Port of New York Authority (hereinafter called the port authority), the port authority is hereby authorized and empowered, in its discretion, to enter into a voluntary agreement or agreements with any county, city, borough, village, town, township or other municipality in said port district, whereby it will undertake to pay a fair and reasonable sum or sums annually in connection with any marine or inland terminal property owned by it, not in excess of the sum last paid as taxes upon such property prior to the time of its acquisition by the port authority. Such payment or payments which the port authority is hereby authorized and empowered to make, shall be in such amount or amounts and shall be payable at such time or times and under such terms and conditions as shall be agreed upon by and between the port authority and such county, city, village,

borough, town, township or other municipality concerned. L.1931, c. 69, § 1, p. 125.

HISTORICAL NOTE

Complementary Laws: N.Y.—McKinney's Unconsol. Laws, §§ 6971-6973.

Title of Act:

An Act authorizing and empowering the Port of New York Authority to make payments to municipalities in the Port of New York District. (L.1931, c. 69, p. 125, approved April 7, 1931.)

32:1-145. COUNTIES AND MUNICIPALITIES AUTHORIZED TO ENTER INTO AGREEMENTS; DISPOSITION OF PAYMENTS

Every county, city, village, borough, town, township or other municipality in the Port of New York District aforesaid is hereby authorized and empowered to enter into such agreement or agreements with the port authority is hereby authorized and empowered to make. The sums so received by any county, city, village, borough, town, township or other municipality shall be devoted to purposes to which taxes may be applied, unless and until otherwise directed by the law of the state in which such municipality is located. L.1931, c. 69, § 2, p. 125.

32:1-146. EFFECTIVE DATE

This act shall take effect upon the enactment into law by the state of New York of legislation having an identical effect with this act, but if the state of New York has already enacted such legislation this act shall take effect immediately. L.1931, c. 69, § 3, p. 126.

APPENDIX G

Relevant Statutes

ARTICLE 2B. MARINE TERMINALS

CROSS REFERENCES

Traffic on highways in marine terminals, see § 32:1-154.18.

Peddling or soliciting business in marine terminals, see §§ 32:1-146.6, 32:1-146-7.

32:1-35.28 MARINE TERMINALS; MUNICIPALITIES AUTHORIZED TO COOPERATE

Upon the concurrence of the State of New York as provided in section nine hereof,[1] the State of New Jersey and New York hereby agree that municipalities, as hereinafter defined, located within the Port of New York District shall be and they hereby are authorized to co-operate with the Port of New York Authority (hereinafter called the Port Authority) in the development of marine terminals and the two said States further agree that the State of New Jersey may authorize the Port Authority to acquire by condemnation or the exercise of the right of eminent domain real property in the State of New Jersey necessary, convenient or desirable for marine terminal purposes, under and pursuant to the Revised Statutes of New Jersey, Title 20:1-1, et seq., or at the option of the Port Authority pursuant to such other or alternate procedure as may be provided by law by such State, and that the State of New York may authorize the Port Authority to acquire by condemnation or the exercise of the right of eminent domain real property in the State of New York necessary, convenient or desirable for marine terminal purposes, under and pursuant to the condemnation law of

[1] Section 32:1-35.36.

that State, or at the option of the Port Authority pursuant to such other or alternate procedure as may be provided by law by such State. L.1947, c. 44, p. 141, § 1; L.1948, c. 212, p. 1013, § 1.

HISTORICAL NOTE

Laws 1948, c. 212, §§ 2,, 4 read as follows:

"2. Upon the concurrence of the State of New York herein, in accordance with section four of this act, the States of New Jersey and New York agree that section one of chapter six hundred thirty-one of the laws of New York of one thousand nine hundred and forty-seven, [McK. Unconsol. Laws § 6671] entitled 'An act to facilitate the developments by the Port of New York Authority of marine terminals, and agreeing with the State of New Jersey with respect thereto,' is hereby amended to read as follows:

"'1. Upon the concurrence of the State of New Jersey as provided in section six hereof, the States of New York and New Jersey hereby agree that municipalities, as hereinafter defined, located within the Port of New York District shall be and they hereby are authorized to co-operate with the Port of New York Authority (hereinafter called the Port Authority) in the development of marine terminals, and the two said States further agree that the State of New Jersey may authorize the Port Authority to acquire by condemnation or the exercise of the right of eminent domain real property in the State of New Jersey necessary, convenient or desirable for marine terminal purposes, under and pursuant to the Revised Statutes of New Jersey, Title 20:1-1 et seq., or at the option of the Port Authority pursuant to such other or alternate pro-

cedure as may be provided by law by such State, and that the State of New York may authorize the Port Authority to acquire by condemnation or the exercise of the right of eminent domain real property in the State of New York necessary, convenient or desirable for marine terminal purposes, under and pursuant to the condemnation law of that State, or at the option of the Port Authority pursuant to such other or alternate procedure as may be provided by law by such State'.

"4. This act [§§ 32:1-35.28, 32:1-35.31] shall take effect upon the enactment into law by the State of New York of legislation having an identical effect with this act; but if the State of New York shall already have enacted such legislation, then this act shall take effect immediately."

Complementary Laws:

N.Y.—McK.Unconsol.Laws §§ 6671-6678.

Title of Act:

An Act to facilitate the development by the Port of New York Authority of marine terminals, and agreeing with the State of New York with respect thereto. L.1947, c. 44, p. 141.

32:1-35.29 CONSENT OF MUNICIPALITY TO ACQUISITION OF PROPERTY; EXISTING INDEBTEDNESS

Nothing herein contained shall be construed to authorize the Port Authority to acquire any marine terminal owned or operated by any municipality or any other property now or hereafter vested in or held by any municipality, without the authority or consent of such municipality as provided in the compact of April thirtieth, one thousand

nine hundred and twenty-one, between the States of New Jersey and New York,[1] nor shall anything herein impair or invalidate in any way any bonded indebtedness of the State, or any municipality, nor impair the provisions of law regulating the payment into sinking funds of revenue derived from municipal property, or dedicating the revenues derived from municipal property to a specific purpose. L.1947, c. 44, p. 141, § 2.

32:1-35.30 DEFINITIONS

The following terms as used herein shall mean:

"Marine terminals" shall mean developments, consisting of one or more piers, wharves, docks, bulkheads, slips, basins, vehicular roadways, railroad connections, side tracks, sidings or other buildings, structures, facilities or improvements, necessary or convenient to the accommodation of steamships or other vessels and their cargoes or passengers.

"Marine terminal purposes" shall mean the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of marine terminals.

"Municipality" shall mean a county, city, borough, village, township, town, public agency, public authority or political subdivision.

"Real property" shall mean lands, structures, franchises and interests in land, including waters, lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple absolute but also any and all lesser

[1] Sections 32:1-1 to 32:1-24.

interests, including but not limited to easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise. L.1947, c. 44, p. 142, § 3.

32.1-35.31 CONSENT OF MUNICIPALITY TO USE OF MARINE TERMINAL OR PROPERTY; CONSENT OF STATES TO ACTIONS OR PROCEEDINGS AGAINST PORT AUTHORITY; VENUE; PARTIAL INVALIDITY

Notwithstanding any contrary provision of law, any municipality located within the Port of New York District is authorized and empowered to consent to the use by the Port Authority of any marine terminal owned by such municipality or of any real or personal property owned by such municipality and necessary, convenient or desirable in the opinion of the Port Authority for marine terminal purposes, including such real property as has already been devoted to a public use and as an incident to such consent, to grant, convey, lease or otherwise transfer to the Port Authority any such marine terminal or real or personal property upon such terms as may be determined by the Port Authority and such municipality. Every such municipality is also authorized and empowered to vest in the Port Authority the control, operation, maintenance, rents, tolls, charges and any and all other revenues of any marine terminal now owned by such municipality, the title to such marine terminal now owned by such municipality, the title to such marine terminal remaining in such municipality. Such consent shall be given, and the execution of any agreement, deed, lease, conveyance or other instrument evidencing such consent

or given as an incident thereto shall be authorized in the manner provided in Article XXII of the compact of April thirtieth, one thousand nine hundred and twenty-one,[1] between the two States creating the Port Authority.

The States of New Jersey and New York hereby consent to suits, actions or proceedings of any form or nature in law, equity or otherwise by any municipality against the Port Authority upon, in connection with or arising out of any such agreement, agreements or any modification thereof or supplement thereto, for the following types of relief and for such purposes only:

(1) For money damages for breach thereof;

(2) For money damages for torts arising out of the operation of the municipal marine terminal;

(3) For rent;

(4) For specific performance;

(5) For reformation thereof;

(6) For an accounting;

(7) For declaratory judgment;

(8) For judgments, orders or decrees restraining or enjoining the Port Authority from transferring title to real property to third persons in cases where it has contracted with such municipality to transfer such title to such municipality; and

(9) For judgments, orders or decrees restraining or enjoining the Port Authority from committing or continuing to commit other breaches of such

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[1] Section 32:1-23.

agreements with such municipality; *provided,* that such judgment, order or decree shall not be entered except upon two days' prior written notice to the Port Authority of the proposed entry thereof; *and provided further,* that upon an appeal taken by the Port Authority from such judgment, order or decree the service of the notice of appeal shall perfect the appeal and shall stay the execution of such judgment, order or decree appealed from, without an undertaking or other security.

When rules of venue are applicable, the venue of any such suit, action or proceeding shall be laid in the county or judicial district in which the marine terminal, which is the subject matter of such agreement between the Port Authority and such municipality, or any part thereof, is located.

If any clause, sentence, paragraph, or part of this subdivision or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this subdivision, and the application thereof to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. L.1947, c. 44, p. 143, § 4; L.1948, c. 212, p. 1015, § 4.

Appendix G

32:1-35.32 STATUTORY PROVISIONS AS SUPPLEMENTARY AGREEMENT; CONSTRUCTION

This section and the preceding sections hereof[1] constitute an agreement between the States of New Jersey and New York supplementary to the compact between the two States dated April thirtieth, one thousand nine hundred and twenty-one, and amendatory thereof[2] and shall be liberally construed to effectuate the purposes of said compact and of the comprehensive plan heretofore adopted by the two States pursuant thereto, and the powers vested in the Port Authority hereby shall be construed to be in aid of and supplemental to and not in limitation or derogation of any of the powers heretofore conferred upon or delegated to the Port Authority. L.1947, c. 44, p. 143, § 5.

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[1] Sections 32:1-35.28 to 32:1-35.31.

[2] Sections 32:1-1 to 32:1-24.

APPENDIX H

Relevant Statutes

54:4-3.3 EXEMPTION OF PUBLIC PROPERTY; MORRIS CANAL AND BANKING COMPANY PROPERTY

Except as otherwise provided by article 1 of this chapter (§ 54:4-1 et seq.), the property of the State of New Jersey; and the property of the respective counties, school district and taxing districts used for public purposes, or for the preservation or exhibit of historical data, records or property; and property acquired by any municipality through tax title foreclosure or by deed in lieu of foreclosure, if not used for private purpose, shall be exempt from taxation under this chapter, but this exemption shall not include real property bought in for debts or on foreclosure of mortgages given to secure loans out of public funds or out of money in court, which property shall be taxed unless devoted to public uses. The lands of counties, municipalities, and other municipal and public agencies of this State used for the purpose and for the protection of a public water supply, shall be subject to taxation by the respective taxing districts where situated, at the taxable value thereof, without regard to any buildings or other improvements thereon, in the same manner and to the same extent as the lands of private persons, but all other property so used shall be exempt from taxation. Property, the title to which is in the Morris Canal and Banking Company, in trust for the State, shall, so long as the title is so vested, be deemed to be the property of the State within the meaning of any tax law. As amended L. 1944, c. 24, p. 63, § 1; L. 1950, c. 269, p. 916, § 1; L. 1960, c. 51, p. —, § 24.

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IN THE

Supreme Court of the United States

October Term, 1969

No. 636

THE CITY OF NEWARK, a municipal corporation of the State of New Jersey,

Petitioner,

vs.

THE PORT OF NEW YORK AUTHORITY, a body corporate and politic, created by Compact between the States of New Jersey and New York,

THE ESSEX COUNTY BOARD OF TAXATION,

and

THE TOWN OF BELLEVILLE, *et als.,*

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

BRIEF FOR RESPONDENT, THE PORT OF NEW YORK AUTHORITY, IN OPPOSITION

SIDNEY GOLDSTEIN,
General Counsel of, and
Attorney for, Respondent,
THE PORT OF NEW YORK AUTHORITY
111 Eighth Avenue
New York, New York 10011

FRANCIS A. MULHERN,
New Jersey Solicitor.

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THE ESSEX COUNTY BOARD OF TAXATION,

and

THE TOWN OF BELLEVILLE, *et als.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

BRIEF FOR RESPONDENT, THE PORT OF NEW YORK AUTHORITY, IN OPPOSITION

The City of Newark is petitioning this Court for a writ of certiorari to review the decision of the New Jersey Supreme Court officially reported at 54 N. J. 171 and unofficially reported at 254 A. 2d 513. The City claims that the following question should be reviewed: "Are the uses of properties at Port Newark operated by the Port Authority

under its lease with Newark * * * exempt from taxation under interstate compacts, represented by N. J. S.-A. 32:1-1 *et seq.*, 32:1-25 *et seq.*, 32:1-144 *et seq.* and 32:1-35.28 *et seq.*?" (Petition, p. 3)

The petition is lacking in merit simply because the New Jersey Supreme Court did not hold, as petitioner's question implies, that Port Newark properties are exempt from taxation under the interstate compacts to which the City refers. Rather, the New Jersey Supreme Court held that the Port Newark Marine Terminal is exempt from taxation under New Jersey's General Tax Exemption Act R. S. 54:4-3.3, as publicly owned property devoted to a public purpose. That Act, with certain exceptions not here germane, exempts from real estate taxation all

> "property of the state of New Jersey; and the property of the respective counties, school districts and taxing districts used for public purposes * * *."

New Jersey courts had previously determined that this statutory provision applies to municipally-owned property. *Hanover Township* v. *Town of Morristown*, 4 N. J. Super. 22, 66 A. 2d 187 (App. Div. 1949); *Jersey City* v. *Blum*, 101 N. J. L. 93, 127 Atl. 214 (E & A, 1924). The Port Newark Marine Terminal is owned by the City but leased to the Port Authority pursuant to interstate compacts which authorize the Port Authority to operate marine terminals. What the New Jersey Supreme Court ruled was that since Port Newark properties, all of which are City owned, were being devoted to statutorily authorized uses, the properties were exempted from taxation under the above quoted General Tax Exemption Act as municipally-owned properties "used for public purposes."

The interstate compacts are relevant only insofar as they contain the legislative authorization for Port Authority operation of certain municipally-owned marine terminals. That they were not the statutory basis on which

Port Newark was held exempt from taxation is clear from the following statements by the New Jersey Supreme Court: "Although the history and contemporaneous construction of the marine terminal act (L. 1947, c. 44; R. S. 32:1-35.28 et seq.) strongly support the conclusion that the Legislature contemplated tax exemption of the Port Newark properties devoted to marine terminal purposes, *reference must be made to R. S. 54:4-3.3, N. J. S. A.*, [New Jersey's General Tax Exemption Act] *for express authority for the exemption*" (emphasis added, Petition, p. 16a) and that "[a]ll in all we find that the properties at the terminal were without exception used for statutorily authorized purposes, were tax exempt as publicly-owned property devoted to public purposes, and that the Law Division's judgment must be modified accordingly." (Petition, p. 28a) In other words, the precise statutory ground on which the New Jersey Supreme Court held that the properties at Port Newark were tax exempt was R. S. 54:4-3.3, New Jersey's General Tax Exemption Act.

That petitioner raises no Federal question, let alone an important Federal question, is evident as well from the four "Supporting Precedents" on which its petition relies as the "Reasons for Granting the Writ". (Petition, p. 9)

Thus, the first case which petitioner cites, *Town of Harrison* v. *County of Westchester*, 13 N. Y. 2d 258, 196 N. E. 2d 240 (1963), involved the question of whether certain hangars at a county-owned airport were being employed "for a public use" within the meaning of New York's Real Property Tax Law, New York's equivalent to New Jersey's General Tax Exemption Act. In determining this issue the New York Court of Appeals relied exclusively on State court decisions involving solely questions of State law. Indeed, the court expressly distinguished the meaning of the phrase "public use" as it appears in the State's Real Property Tax Law from the use of the phrase in the 5th Amendment with reference to condemnation.

The second case cited by petitioner, *In re Township of Moon*, 387 Pa. 144, 127 A. 2d 361 (1956),[1] concerned the interpretation to be accorded State legislation which exempts from taxation publicly owned property "used for public purposes." The opinion of the Pennsylvania Supreme Court neither cites, nor refers to, a single decision of this Court, any other Federal court or any principle or rule of Federal law. The Pennsylvania Supreme Court limited its citation of authorities to State court decisions involving solely questions of State law.

The third case cited by petitioner, *Gloucester Ice & Cold Storage Co.* v. *Assessors of Gloucester*, 337 Mass. 23, 147 N. E. 2d 820, 822 (1958), involved the question of who should bear the ultimate burden of real property taxation when land owned by the Commonwealth but "subleased to Cold Storage is * * * used for other than public purposes." Here again, in deciding this issue, the opinion of the highest court of the State makes no reference to any decision by this Court, any other Federal court or to any principle or rule of Federal law. The Massachusetts Supreme Judicial Court limited its citation of authorities to State court decisions involving solely questions of State law.

At issue in the fourth and final case cited by petitioner, *City of Cleveland* v. *Perk*, 2 Ohio St. 2d 173, 207 N. E. 2d 556 (1965), was whether portions of a municipal airport were being used exclusively for a public purpose within the meaning of a certain provision of Ohio's revised code. Once more, the highest court of the State reached its determination without reference to a single decision by this Court, any other Federal court or to any principle or rule

[1] Petitioners reliance upon this case is misplaced. There was a very strong dissent in *Moon*, and, in 1967, the Pennsylvania Supreme Court, in an opinion which petitioner fails to mention, held tax exempt almost all of the very same airport properties which that court had, in *Moon*, held taxable. *Appeals of County of Allegheny*, 425 Pa. 578, 229 A. 2d 890.

of Federal law. The Ohio Supreme Court limited its citation of authorities to a single State court decision which was concerned solely with principles of State law.

In view of the above, the inescapable conclusion is that the petitioner has utterly failed to raise before this Court a question of Federal law, let alone an important question of Federal law as petitioner, without citation of any authority, cavalierly asserts.

WHEREFORE, we respectfully submit that this Court should deny petitioner's prayer that a writ of certiorari be granted to review the decision of the New Jersey Supreme Court in the instant litigation.

Respectfully submitted,

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